

No. 12405

United States
Court of Appeals
for the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.

ROTHSCHILD INTERNATIONAL STEVE-
DORING COMPANY, a corporation,
Appellee.

Apostles on Appeal

Appeal from the United States District Court,
Western District of Washington,
Northern Division.

FILE

FEB 3 - 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF PROCTORS

J. CHARLES DENNIS,
1017 U. S. Court House,
Seattle, Washington,

BOGLE, BOGLE & GATES,
603 Central Building,
Seattle, Washington,

Proctors for Appellant.

MR. W. E. DuPUIS,
816 Northern Life Tower,
Seattle 1, Washington,

Proctor for Appellee.

In the District Court of the United States for the
Western District of Washington, Northern Division
No. 15131

ALFRED L. DILLON,

Libellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

LIBEL IN PERSONAM

Libellant for cause of action alleges as follows:

I.

That at all times mentioned herein libellant was, and is now, a resident of Seattle, Washington, said place being in and within the territorial confines over which the above entitled Court has jurisdiction.

II.

That at all times hereinafter mentioned, the United States of America was the owner and operator of the M. S. Goucher Victory and at all times said vessel was employed as a merchant vessel in navigable waters at Seattle, Washington.

III.

That prior to the 13th day of May, 1946, the respondent, through its agent, the Union Sulphur Co., Incorporated, entered into a contract with the Rothschild International Stevedoring Company, said stevedoring company agreeing to act, and acting

at all times mentioned in this complaint, as an independent contractor having complete control and supervision of all operations pertaining to the loading and discharge of cargo from said vessel, the M. S. Goucher Victory, in the Port of Seattle in the navigable waters of Puget Sound at Seattle, Washington.

IV.

That as an independent contractor, the Rothschild International Stevedoring Company hired the libellant, Alfred L. Dillon, as a longshoreman and entered upon the performance of said contract, and that libellant at all times herein mentioned acted under the orders of the Rothschild International Stevedoring Company, in its capacity as an independent contractor and employer and not as an agent or employee of said respondent.

V.

That on or about the 13th day of May, 1946, at about the hour of 9:30 P. M., the libellant, Alfred L. Dillon, while in the course of his employment, was standing in the tween decks of the No. 1 hold and was in the act of preparing to guide a strongback into the slot provided as a resting place for said strongback on the port combing of said deck, and while using due care and caution on his part, the said strongback suddenly and without warning fell and caught libellant's right hand, crushing the same and seriously injuring libellant, as hereinafter more fully alleged.

VI.

That the said injuries and damages to the libellant were solely and proximately caused by the negligence of the respondent, its agents and employees, by the unseaworthiness of said vessel, failure to provide libellant with a safe place in which to work, and failure to keep in order and in proper condition, the gear, tackle, apparel and appliances belonging to said vessel, in that the automatic brake on the winch which was being used to suspend said strongback was in a dangerous, faulty and defective condition; that by reason of said condition, the said automatic brake slipped, thereby causing said strongback to suddenly fall upon the said hand of libellant; that said winch was unfit and unsafe for the purpose for which it was intended, and as such constituted a hazard and menace to the lives and limbs of men required to work in connection with the same; that the existence of this defective condition was known to respondent, its agents, servants and employees, or in the exercise of due care, caution and inspection on the part of said respondent, its agents, servants and employees, who should have known of said defective condition; that as a direct and proximate result of the negligence of the respondent, as aforesaid, libellant, Alfred L. Dillon, received the following injuries, to-wit: Severe wrenching of the right shoulder, crushing of the right hand; that said right hand has been rendered totally and permanently useless by reason of said

crushing; that libellant sustained a severe nervous shock and suffering and will continue to suffer for a long time to come, extreme pain and suffering and mental anguish; that libellant was confined to a hospital; that libellant's health and vitality are permanently impaired as a result of the injuries received, as aforesaid; that libellant is totally disabled from following his occupation as a longshoreman; that at the time of receiving said injuries, libellant was an able-bodied man of the age of 56 years, with a life expectancy of 16.72 years; that ever since said accident, libellant has been under the treatment of physicians and surgeons; that libellant has incurred expenses for physicians, surgeons and medical treatment, X-ray and hospitalization and other expenses, in an amount now unknown to libellant; that ever since said injuries libellant has been and is now totally incapacitated, and will be permanently incapacitated from following a gainful occupation; that by reason of the injuries aforesaid, libellant has been damaged in the sum of \$50,000.00.

Wherefore, libellant prays for judgment in the sum of \$50,000.00, together with costs and disbursements herein to be taxed.

ZABEL, POTH & PAUL,
By /s/ PHILIP J. POTH,
Attorneys for Libellant.

[Endorsed]: Filed Oct. 29, 1947.

United States of America vs.

District Court of the United States
Western District of Washington

No. 15131

ALFRED L. DILLON,

vs.

UNITED STATES OF AMERICA,
Respondent.

PRAECIPE

To the Clerk of the Above-Entitled Court:
You will please issue Citation to respondent.

ZABEL, POTH & PAUL,
By /s/ FREDERICK PAUL,
Proctors for Libellant.

[Endorsed]: Filed Oct. 29, 1947.

[Title of District Court and Cause.]

STIPULATION FOR COSTS

Know All Men By These Presents:

That the undersigned, Alfred L. Dillon, as Principal, and National Surety Corporation, a corporation, organized and existing under and by virtue of the laws of the State of New York, and duly authorized to transact the business of surety in the State of Washington, as Surety, are held and firmly bound unto Whom It May Concern in the sum of Two Hundred Fifty Dollars (\$250.00), for the payment of which sum well and truly to be made, they do hereby bind themselves, and their respective

successors and assigns, jointly and severally, firmly by these presents.

The Condition of this obligation is such that,

Whereas, a libel has been filed in the above entitled Court by the above named libelant against the above named respondent, for the reasons and causes in said libel mentioned; and,

Whereas, the above named Principal has filed a libel in the above entitled Court in the said cause, claiming damages on account of injuries sustained;

Now, Therefore, if the above bounden Principal shall abide by and pay all costs and expenses which shall be awarded against him by the final decree of said Court in said cause, or by any interlocutory order of said Court in the progress of said cause; or in case of appeal, by any appellate Court, then this obligation shall be void; otherwise, it shall be and remain full force and virtue.

In Witness Whereof, said Principal has hereunto subscribed his name, by his attorneys and agents, and said Surety has hereunto subscribed its name and affixed its seal, this 31 day of October, 1947.

ZABEL, POTTH & PAUL,

By /s/ OSCAR A. ZABEL,
Attorneys for Principal.

(Principal)

NATIONAL SURETY
CORPORATION,

[Seal] By /s/ GORDON SPINS,
As Its Attorney-in-Fact.
(Surety)

[Endorsed]: Filed October 29, 1947.

[Title of District Court and Cause.]

ANSWER

Comes now United States of America, Respondent herein, and for answer to the Libel on file admits, denies and alleges as follows:

I.

Answering Article I, Respondent has no knowledge or information sufficient to form a belief as to the matters alleged therein and therefore denies the same.

II.

Answering Article II, Respondent admits the same.

III.

Answering Article III, Respondent admits the same.

IV.

Answering Article IV, Respondent has no knowledge or information sufficient to form a belief and therefore denies the same.

V.

Answering Article V, Respondent denies the same.

VI.

Answering Article VI, Respondent denies each and every allegation therein contained.

Further Answering the Libel of Libellant, and by way of a First Affirmative Defense thereto, Re-

spondent alleges that if the Libellant has been injured and/or damaged, as in his Libel alleged, or at all, said injuries and/or damages were proximately due to the negligence of the Libellant in that Libellant placed his right hand in a careless and perilous position under the strongback which was being lowered instead of guiding the strongback into position by grasping it in a less hazardous position.

Further Answering the Libel of Libellant, and by way of a Second Affirmative Defense thereto, Respondent alleges that if the Libellant has been injured and/or damaged, as in his Libel alleged, or at all, said injuries and/or damages were proximately caused by and contributed to by the negligence of the fellow servants of Libellant, who were employed by the Rothschild International Stevedoring Company, in that the winch driver operating the winch did so in a negligent fashion and failed to heed the signals of the hatch tender to slack away on the winches.

Wherefore, having fully answered the Libel of Libellant, Respondent prays that it may be dismissed and recover its costs and disbursements herein to be taxed.

/s/ J. CHARLES DENNIS,
United States Attorney.

By /s/ BOGLE, BOGLE & GATES,
Of Counsel,

Proctors for Respondent, United States of America.

United States of America,
Western District of Washington,
Northern Division—ss.

Edw. S. Franklin, being first duly sworn on oath deposes and says:

That he is one of the proctors for the Respondent above named; that he makes this verification for and on behalf of said Respondent as he is authorized to do; that he has read the foregoing answer, knows the contents thereof and believes the same to be true.

/s/ EDW. S. FRANKLIN.

Subscribed and sworn to before me this 17th day of March, 1948.

/s/ ROBERT V. HOLLAND,
Notary Public in and for the State of Washington,
residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed March 18, 1948.

In the District Court of the United States for the
Western District of Washington, Northern Division

In Admiralty No. 15131

ALFRED L. DILLON,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent,

UNITED STATES OF AMERICA,

Petitioner,

vs.

ROTHSCHILD-INTERNATIONAL STEVE-
DORING COMPANY, a corporation,
Third Party Respondent.

NOTICE OF APPLICATION FOR ORDER
IMPLEADING THIRD PARTY

To: Alfred L. Dillon, libelant above named, and to
Zabel, Poth & Paul, his proctors:

You and Each of You are hereby notified that petitioner, United States of America, will apply to the Honorable John C. Bowen, Judge of the United States District Court, Western District of Washington, at 10:00 A. M. on Thursday, April 15, 1948, for an order impleading Rothschild-International Stevedoring Company as third party respondent

pursuant to Admiralty Rule 56. Please be governed accordingly.

/s/ BOGLE, BOGLE & GATES,
Of Counsel.

/s/ J. CHARLES DENNIS,
U. S. District Attorney,

Proctors for Petitioner, United States of America.

Receipt of copy acknowledged.

[Endorsed]: Filed April 15, 1948.

[Title of District Court and Cause.]

ORDER ALLOWING THIRD PARTY
PETITION

The above entitled cause having duly and regularly come on for hearing upon the 15th day of April, 1948, before the above entitled court, the undersigned Judge presiding, upon motion of respondent, United States of America, for an order permitting it to file under Rule 56, third party petition impleading an additional party as third party respondent, and the Court, after having examined the proposed third party petition, with proposed stipulation for costs, having become fully advised;

Now, Therefore, it is hereby Ordered that said motion be granted, that said petition be filed, and that citation be issued as prayed by said petition,

in conformity with the usual admiralty practice of this court, against said third party respondent, wherein the return date shall be designated as the 7th day of May, 1948.

Done in Open Court this 15th day of April, 1948.

/s/ JOHN C. BOWEN,
U. S. District Judge.

Presented by:

/s/ ROBERT V. HOLLAND,
Of Proctors for Respondent,
United States of America.

Approved as to form:

/s/ [Illegible.],
Proctors for Libelant.

[Endorsed]: Filed April 15, 1948.

United States of America vs.

In the District Court of the United States for
the Western District of Washington, Northern
Division

In Admiralty No. 15131

ALFRED L. DILLON,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent.

UNITED STATES OF AMERICA,

Petitioner,

vs.

ROTHSCHILD-INTERNATIONAL STEVE-
DORING COMPANY, a corporation,

Third Party Respondent.

UNITED STATES OF AMERICA'S
THIRD PARTY PETITION

Comes Now United States of America, the petitioner, (the respondent above named) and for its petition against Rothschild-International Stevedoring Company, a corporation, as third party respondent, under Admiralty Rule 56, in the above entitled cause, civil and maritime, alleges as follows:

I.

That during all times material, your petitioner, United States of America, through its then agency,

War Shipping Administration, now the United States Maritime Commission, was the owner and operator of a large fleet of vessels plying the various sea lanes of the world including the SS Goucher Victory.

II.

That the third party respondent, Rothschild-International Stevedoring Company, a corporation, now is and at all times herein material, was a corporation duly organized and existing under and by virtue of the laws of the State of Washington, engaged in the business of stevedoring cargo in various ports of the State of Washington. That in connection with said stevedoring operations, third party respondent, Rothschild-International Stevedoring Company, a corporation, entered into a written contract with the War Department, Transportation Corps, Seattle Port of Embarkation, on July 1, 1945, providing for the performance by third party respondent of all stevedoring operations at the Seattle Army Port of Embarkation to and including June 30, 1946. That said contract is designated officially as Contract No. W 45-045 tc-476 O. I. No. 13-46, which contract was in full force and effect on May 13, 1946.

III.

That on or about December 1, 1947, there was filed in the above-entitled court by libelant, Alfred L. Dillon, against petitioner as respondent, a libel in admiralty, being Cause No. 15131, wherein the libelant seeks to recover from your petitioner dam-

ages in the sum of Fifty Thousand Dollars (\$50,000.00) for physical injuries sustained by him on May 13, 1946, at the Seattle Port of Embarkation, while engaged as a stevedore aboard the SS Goucher Victory, and while employed by third party respondent, Rothschild-International Stevedoring Company, a corporation, because of the alleged unseaworthy condition of the vessel and its winches, as more fully appears from the libel on file herein, a copy of which is attached to this petition.

IV.

That to said libel, your petitioner, as respondent herein, has filed its answer, denying all liability for damages to libelant; that the issues so raised upon said libel continue pending without trial or adjudication.

V.

That said written stevedoring contract referred to above provides as follows:

"The Contractor (Rothschild-International Stevedoring Company), shall be liable to the Government for any loss or damage which may be sustained by the Government as a result of the fault or negligence of the Contractor's officers, agents or employees," subject to certain exceptions not material to this matter.

VI.

That the injury to libelant was directly and proximately caused by the negligence of the officers,

agents and employees of Rothschild-International Stevedoring Company, a corporation, third party respondent, in the following particulars:

(1) Failing to afford libelant, one of its workmen, proper supervision and a safe place in which to work.

(2) Negligence of the hatch tender at No. 1 hatch of the SS Goucher Victory in failing to warn the winch driver to shut off the winches before the strongback was lowered on libelant's hand and negligence of the winch driver after receiving such signal from the hatch tender in failing to promptly execute the same.

VII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, petitioner prays that citation in due form of law, in harmony with the admiralty practice of the above entitled court, may issue against Rothschild-International Stevedoring Company, a corporation, citing it to appear and answer all and singular the allegations of this petition and of the original libel herein; that the above cause may proceed against said third party respondent as if originally made a party herein; and that if petitioner, notwithstanding its answer to said libel, and despite the denials thereof, be adjudged by this Court liable on account of negligence as alleged by said libel, then that the decree of this court grant judgment against said third party respondent for full indem-

nity in favor of this petitioner in accordance with the written stevedoring contract or for a joint tort feasor's contribution to damages in favor of said petitioner against said third party respondent, and that petitioner may have such other relief as may be meet and just, including its costs and expenses.

J. CHARLES DENNIS,
U. S. District Attorney,

BOGLE, BOGLE & GATES,
Of Counsel.

Proctors for Respondent,
United States of America.

United States of America,
State of Washington, County of King—ss.

Edw. S. Franklin, being first duly sworn on oath deposes and says:

That he is a member of the firm of Bogle, Bogle & Gates and as such one of the proctors of record for the United States of America, petitioner; that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

EDW. S. FRANKLIN.

Subscribed and sworn to before me this 12th day of April, 1948.

ROBERT V. HOLLAND,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed Feb. 9, 1950.

[Title of District Court and Cause.]

ANSWER TO THIRD PARTY RESPONDENT

Comes Now, Rothschild International Stevedoring Company, a corporation, Third Party Respondent, and for answer to Third Party Petition, admits, denies and alleges as follows:

I.

For answer to Article VI, Third Party Respondent denies each and every allegation, matter and thing therein contained.

II.

For answer to Article VII, Third Party Respondent denies each and every allegation, matter and thing therein contained.

Further Answering and by way of a First Affirmative Defense, Third Party Respondent Alleges:

I.

That if Libelant has been injured and/or damaged, as in his libel alleged, or at all, said injuries and/or damage were proximately caused and contributed to by the negligence of libelant, in that he voluntarily placed himself in a position of peril immediately prior to his alleged injuries, in that while guiding a strongback into the slot provided as a resting place for said strongback on the port combing of the deck, said libelant negligently and carelessly placed his right hand under the same in a position of obvious and apparent peril and danger.

That in the work in which the libelant was employed at the time, it was not at all necessary for him to place his hand where he did. That said libelant has been engaged in the work of stevedoring for many years and that he knew, or in the exercise of reasonable care should have known, that said action on his part was careless and absolutely dangerous.

Further Answering and by way of a Second Affirmative Defense, Third Party Respondent Alleges:

I.

That if the libelant has been injured and/or damaged, as in his libel alleged, or at all, said injuries and/or damage were proximately caused by and contributed to by the risks normally assumed by stevedores in their hazardous occupation. That said accident and the alleged injuries were not in any way caused or brought about by any negligence whatsoever on the part of the Third Party Respondent, or any of its agents, servants or employees.

Wherefore, having fully answered the Third Party Petition herein, Third Party Respondent prays that the same be dismissed with prejudice, that no relief be granted to the petitioner thereunder and that Third Party Respondent be given judgment for its costs and disbursements expended in this action.

/s/ W. E. DuPUIS,

Proctor for Rothschild International Stevedoring Company, a corporation, Third Party Respondent.

United States of America,
State of Washington,
County of King—ss.

W. E. DuPuis, being first duly sworn, upon oath deposes and says:

That he is the Proctor for the Third Party Respondent herein, that he makes this verification for and on behalf of said Respondent, that he is authorized so to do; that he has read the foregoing Answer, knows the contents thereof and believes the same to be true.

/s/ W. E. DUPIUS.

Subscribed and Sworn to before me this 25 day of October, 1948.

[Seal] By /s/ RALPH E. FRANKLIN,
Notary Public in and for the State of Washington,
residing at Seattle.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 25, 1948.

In the District Court of the United States for the
Western District of Washington, Northern Division

No. 2261

ALFRED L. DILLON,

Plaintiff,

vs.

UNION SULPHUR CO., INC., a corporation,
Defendant.

In Admiralty No. 15131

ALFRED L. DILLON,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent,

UNITED STATES OF AMERICA,

Petitioner,

vs.

ROTHSCHILD-INTERNATIONAL STEVE-
DORING COMPANY, a corporation,
Third Party Respondent.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above entitled causes having duly come on
for hearing before the above entitled court, without
a jury, on the 23 day of June, 1949, the Libelant
and Plaintiff being represented by Oscar A. Zabel,

his attorney; and the Respondent, United States of America, being represented by Bogle, Bogle and Gates, and Edward S. Franklin, and by J. Charles Dennis, United States District Attorney for the Western District of Washington, Northern Division, and the Defendant, Union Sulphur Co., Inc., a corporation, being represented by Bogle, Bogle and Gates and Edward S. Franklin, and the Rothschild-International Stevedoring Company, a corporation, Third Party Respondent, being represented by W. E. DuPuis. Opening statement on behalf of plaintiff and libelant, by his counsel, Oscar A. Zabel, having been made, evidence on behalf of Plaintiff was adduced thereafter. Opening statement on behalf of Defendant and Respondent and Third Party Respondent, by their respective counsel, having been made, and evidence in their behalf having been adduced, at the conclusion of which Plaintiff's and Libelant's rebuttal evidence was given, whereupon argument of respective counsel was then heard.

From the evidence in the above causes consolidated for trial, the court makes the following:

Findings of Fact

I.

That the defendant, Union Sulphur Co., Inc., is a corporation organized under the laws of the State of New York, and at all times hereinafter mentioned was the general agent of the M. S. Goucher Victory, a Merchant Vessel of the United States, which vessel was engaged in the transportation of cargo by water in interstate or Maritime Commerce under the gen-

eral agency agreement with the United States of America, being respondent's Exhibit A-3, and the court finds that the said defendant, Union Sulphur Co., Inc., a corporation, was not liable as a matter of law in this action and that the same should be dismissed as to said defendant.

II.

That the respondent, United States of America, was the owner and operator of the M. S. Goucher Victory and at all times said vessel was employed as a Merchant Vessel in navigable waters in Seattle, Washington.

III.

That prior to May 13, 1946, the respondent, through its agent, the United Sulphur Co. Inc., entered into a contract with the Rothschild-International Stevedoring Company agreeing to act, and acting at all times mentioned as an independent contractor having complete control and supervision of all operations pertaining to the loading and discharge of cargo from the said vessel, the M. S. Goucher Victory in the port of Seattle in the navigable waters of Puget Sound, Seattle, Washington.

IV.

That as an independent contractor, the Rothschild-International Stevedoring Company hired the libellant, Alfred L. Dillon, as a longshoreman and that the libellant acted under the orders of the Rothschild-International Stevedoring Co. in its capacity as an independent contractor and employer.

V.

That on or about the 13th day of May, 1946, at about the hour of 9:30 p.m., the libelant, Alfred L. Dillon, while in the course of his employment, was standing in the tween decks of the No. 1 Hold and was in the act of guiding a strong-back into the slot provided as a resting place for said strong-back on the port coaming of said deck, and that while using due care and caution on libelant's part, the said strong-back suddenly and without warning fell and caught libelant's right hand injuring it as hereinafter more fully set out.

VI.

That the said injuries to libelant were proximately caused by the unseaworthiness of the said ship, and by the passive negligence of the Rothschild-International Stevedoring Co., in that the winches at the hatch where the libelant was working and in operation in connection with the job being done had defective and insufficient equipment, namely, brakes which did slip, and that such slipping of the brakes did proximately cause a sudden lowering of said strong-back and the resulting crushing of the little finger on libelant's right hand and the finger next to that little finger, and also the tendons of the said fingers and the flesh and tissues of the said fingers.

VII.

That the winch brakes in question had been in that unseaworthy insufficient condition for some

time, long enough for the respondent, United States of America, to have discovered it and had time to have remedied it and repaired the said defect, and for a time long enough for the Third Party Respondent, Rothschild-International Stevedoring Co. to have, by reasonable inspection, ascertained and given attention to such unseaworthy and insufficient condition.

VIII.

That the respondent, United States of America, is liable for the unseaworthiness of the ship caused by such unseaworthy and insufficient equipment in and about the winches and the winch brakes; and that the Third Party Respondent, Rothschild-International Stevedoring Co. is guilty of passive negligence in that it failed to exercise due and ordinary care in furnishing the libelant and those persons working with him a sufficient instrumentality reasonably safe and suitable for doing the work in which libelant and other employees of the Rothschild International Stevedoring Co., were engaged at the time the accident occurred; and that such negligence on the part of the Rothschild-International Stevedoring Co. was a proximate cause of the accident and resultant personal injuries sustained by libelant.

IX.

That the libelant sustained injuries to his little finger and the finger next to that in his right hand, experiencing soreness for a long time in and about

those fingers and that in the process of favoring those fingers and giving up to the soreness of them, he has experienced some stiffness in the joints of those and other fingers at the large knuckles of his hand; in addition, libelant has received disability causing him to be unable to work as a longshoreman as a result of this accident, and received traumatic injury, namely, fractures in the little or fifth finger and in the finger next to that (described as the fourth finger) and traumatic injury to the tendons and flesh tissues in and about those fingers, and the court further finds that there is doubt as to whether said fingers will ever be normal again, as a proximate result of all which libelants right hand is in a very bad and largely disabled condition.

The Court further finds that the sum of \$7,500.00 is a reasonable and just sum to compensate the libelant for all of the injuries and damages sustained.

Done in Open Court this 25th day of July, 1949.

/s/ JOHN C. BOWEN,
Judge.

From the foregoing Findings of Fact, the Court reaches the following:

Conclusions of Law

I.

That the libelant, Alfred L. Dillon, have judgment against the respondent, United States of America for the sum of Seventy-Five Hundred Dollars (\$7,500.00), together with costs herein incurred and

said respondent and libelant should recover nothing against third party respondent Rothschild-International Stevedoring Co., a corporation.

II.

That the action against the Union Sulphur Co., Inc. be dismissed with prejudice and without costs;

Done in Open Court this 25th day of July, 1949.

/s/ JOHN C. BOWEN,
Judge.

Presented by:

/s/ OSCAR A. ZABEL,
Attorney for Libelant.

[Endorsed]: Filed July 25, 1949.

In the District Court of the United States for
the Western District of Washington, Northern
Division

No. 2261

ALFRED L. DILLON,

Plaintiff,

vs.

UNION SULPHUR CO., INC., a corporation,
Defendant.

In Admiralty, No. 15131

ALFRED L. DILLON,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent,

UNITED STATES OF AMERICA,

Petitioner,

vs.

ROTHSCHILD-INTERNATIONAL STEVE-
DORING COMPANY, a corporation,
Third Party Respondent.

JUDGMENT AND DECREE

The above consolidated cases having come on for trial before the undersigned, judge of the above entitled Court, without a jury on July 23, 1949; libellant being present in person and represented by his attorney, Oscar A. Zabel; respondent, United States of America, being represented by Bogle, Bogle and Gates and Edward S. Franklin, and the third party

respondent, Rothschild International Stevedoring Co., being represented by W. E. DuPuis; opening statements were made by respective counsel, evidence was submitted on behalf of all parties, and closing arguments of respective counsel were heard.

Thereafter, the Court entered herein Findings of Fact and Conclusions of Law, in conformity with which the following judgment is hereby entered:

I.

That the libelant, Alfred L. Dillon, have and recover judgment against the respondent, United States of America, in the sum of \$7,500 and taxable costs expended herein, to be taxed by the Clerk.

II.

That the defendant, Union Sulphur Co., Inc., is dismissed in this action with prejudice and without costs.

III.

That the third party respondent, Rothschild International Stevedoring Co. is dismissed from any liability in this action and that the said third party respondent have and recover from the respondent, the United States of America, its taxable costs herein incurred to be taxed by the Clerk.

Done In Open Court this 25th day of July, 1949.

/s/ JOHN C. BOWEN,
Judge.

Presented By:

/s/ OSCAR A. ZABEL,
Attorney for Libelant.

[Endorsed]: Filed July 25, 1949.

[Title of District Court and Cause.]

In Admiralty, No. 15131

PETITION FOR APPEAL AND
ORDER FOR APPEAL

To the Honorable Above-Entitled Court:

Your petitioner and Respondent United States of America prays that it be allowed to appeal from the final decree entered in this court and cause on July 25, 1949 to the United States Court of Appeal for the Ninth Circuit insofar as said final decree failed to award the United States of America recovery over, in whole or in part, from Rothschild-International Stevedoring Company, a corporation, third party respondent, on account of the judgment and decree entered against your petitioner in the amount of \$7,500.00 and costs in favor of libelant Alfred L. Dillon, which is the only question petitioner desires to review on appeal.

Wherefore, your petitioner prays that its appeal be allowed, and that the usual Apostles on Appeal be sent to the United States Court of Appeals for the Ninth Circuit and that the usual citation issued directed to Rothschild-International Stevedoring Company, third party respondent above named, in order that the decree may be reviewed and modified or reversed as to the said Court of Appeals for the Ninth Circuit may seem just and in accordance with

the Assignment of Errors filed herewith; and your petitioner will ever pray.

Dated this 13th day of October, 1949.

Of Counsel

BOGLE, BOGLE & GATES

/s/ J. CHARLES DENNIS,

U. S. Attorney,

Proctors for Respondent and Petitioner, United States of America.

Upon the foregoing petition,

It Is Ordered that the appeal herein be allowed as prayed for and that Citation on Appeal issue forthwith.

Dated this 14th day of October, 1949.

/s/ JOHN C. BOWEN,

U. S. District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed October 14, 1949.

[Title of District Court and Cause.]

In Admiralty, No. 15131

CITATION ON APPEAL

To: Rothschild-International Stevedoring Company,
and W. E. Du Puis, its Proctor:

Greeting:

Whereas United States of America, petitioner, has lately appealed to the United States Circuit

Court of Appeals for the Ninth Circuit from that portion of the final decree rendered in said cause on July 25, 1949, in said District Court of the United States, for the Western District of Washington, Northern Division, which decree fails to grant petitioner United States of America recovery over, either by way of full indemnity or contribution against Rothschild-International Stevedoring Company, a corporation, third party respondent, against the judgment entered by said final decree against the United States of America in favor of libellant Alfred L. Dillon in the amount of \$7,500.00 and costs; you are therefore, cited and admonished to be and appear before the United States Court of Appeals for the Ninth Circuit, San Francisco, California, within forty days of the date of said appeal, to show cause, if any there be, why said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given Under My Hand at Seattle, in said district, October 14th, 1949.

[Seal] s/ JOHN C. BOWEN,
 U. S. District Judge.

- Receipt of copy acknowledged.

[Endorsed]: Filed October 14, 1949.

[Title of District Court and Cause.]

In Admiralty, No. 15131

ASSIGNMENT OF ERRORS

United States of America, respondent and peti-

tioner herein, appealing from the final decree entered in this court and cause on July 25, 1949, makes the following Assignment of Errors:

I.

That the trial court erred in refusing to grant petitioner and respondent United States of America recovery over either by way of full indemnity or contribution against Rothschild-International Stevedoring Company, a corporation, third party respondent, for the amount of judgment and costs decreed against respondent and petitioner in favor of libelant Alfred L. Dillon.

II.

That the trial court erred in entering Findings of Fact and Conclusions of Law and decreeing that third party respondent Rothschild-International Stevedoring Company, a corporation, was entitled to its costs against petitioner and respondent United States of America.

Dated this 14th day of October, 1949.

Of Counsel

BOGLE, BOGLE & GATES

/s/ J. CHARLES DENNIS,
U. S. Attorney,

Proctors for Respondent and Petitioner United States of America.

Receipt of copy acknowledged.

[Endorsed]: Filed October 14, 1949.

In the District Court of the United States for
the Western District of Washington, Northern
Division

No. 15131

ALFRED L. DILLON,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent,

UNITED STATES OF AMERICA,

Petitioner,

vs.

ROTHSCHILD-INTERNATIONAL STEVE-
DORING COMPANY, a corporation,
Third Party Respondent.

Before: The Honorable John C. Bowen,
District Judge.

TRANSCRIPT OF PROCEEDINGS AT TRIAL

June 23, 1949, 11:00 o'clock a.m.

Appearances:

Oscar A. Zabel, of the firm of Zabel, Poth & Paul,
appearing for and on behalf of libelant.

Edward S. Franklin, of the firm of Bogle, Bogle
& Gates, representing J. Charles Dennis, United
States attorney, appearing for and on behalf of
respondent and petitioner United States of America.

W. E. DuPuis, appearing for and on behalf of

third party respondent, Rothschild International Stevedoring Company.

The Court: Are parties and counsel ready to proceed with the trial of Dillon vs. United States of America and the United States of America vs. Rothschild International Stevedoring Company?

Mr. Zabel: Yes, Your Honor.

Mr. DuPuis: Yes, Your Honor.

Mr. Franklin: May I address the Court? At this time the respondent, United States of America, moves that a subsequent action instituted in the case of Alfred Dillon vs. Union Sulphur Company, on the law [2*] side, No. 2261, be consolidated for trial purposes with this action for the reason that the matters in controversy are identical in the subsequent action, which I am asking be consolidated with this action.

It is alleged in this libel that the United States of America was the owner and operator of the Goucher Victory, and that the Union Sulphur Company was merely acting as general agent. For some unknown reason, shortly before this case was set for trial, an independent action was instituted on the law side, Alfred L. Dillon vs. Union Sulphur Company. I think it would conserve the time of the Court and parties if the matters were consolidated.

The Court: What effect will that have on the time of the trial? Will that possibly have as one result a delay in the beginning of the trial?

Mr. Franklin: I do not think so, because the

* Page numbering appearing at bottom of page of original Reporter's Transcript.

question in both cases, if the Court please, is whose negligence was responsible for the accident. In the one action, they say it is the United States, and in another action they say it is the Union Sulphur Company. I make that suggestion to save everybody's time. Of course, the disposition of this case, I presume, may dispose of the second action.

The Court: Mr. Zabel, do you wish on behalf of [3] the liabelant to make any statement?

Mr. Zabel: Do you mean in connection with the matter Mr. Franklin has just raised?

The Court: Yes.

Mr. Zabel: The reason the second action, 2261, was instituted is that it is alleged in this second action that the Union Sulphur Company was the operator of the MS Goucher Victory, a merchant vessel, and that it was under charter of the vessel under an agreement with the United States of America, the exact nature of the agreement being unknown to the plaintiff.

The Court: Mr. Zabel, if you will excuse me for interrupting you, I would rather you would just go to the question of your attitude towards his request that these two actions be joined. I do not need anything else. Do you agree to it or oppose it? If you oppose it, perhaps a statement is needed; otherwise not.

Mr. Zabel: I do not oppose it, because it is true that the issues of negligence and all that are identical.

The Court: That being the case, although Judge

Black has not had an opportunity to offer his consent since I believe he is absent from the district, but if the situation were reversed with respect to him and me, I would expect him to feel authorized to deal with any business pending in the court, and I am sure he would [4] feel disposed to do so if his doing so was deemed appropriate and not objected to by counsel interested, I believe these two actions should be consolidated in the interest of time saving. There is no need of having a trial with one set of litigants and later on having both attorneys and parties and their witnesses called back again. It seems to me that would be a great loss of time.

In view of the request and the attitude of the libelant stated by Mr. Zabel, the Court is of the opinion that the motion should be granted and it is so ordered.

Whereupon, opening statement having been made on behalf of libelant, the following proceedings were had and done, to-wit:

Mr. Franklin: If the Court please, the respondent prior to the actual trial of the case, moves that all witnesses be excluded from the courtroom.

The Court: With the exception of the plaintiff, all witnesses in this case and all persons who may be called as witnesses are excused from the courtroom and will remain in attendance in the anteroom subject to your being called to the witness chair. [5]

The plaintiff and libelant may now call his first witness.

ALFRED L. DILLON

called as a witness by and on behalf of libelant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Zabel:

Q. What is your name?

A. Alfred Larry Dillon.

Q. You are the libelant and plaintiff in these consolidated cases? A. Yes, sir.

Q. Are you a resident of Seattle, King County, Washington? A. Yes, sir.

Q. What was your age under date of May 13, 1946? A. 56 years old.

Q. Are you married? A. A widower.

Q. What is your occupation?

A. Stevedore.

Q. And how long have you been in that occupation? [6] A. For 33 years.

Q. Have you been in that occupation in this city during that period of time?

A. 27 years in the city of Seattle.

Q. On or about May 13, 1946, by whom were you employed?

A. By the International Rothschild Stevedoring Company.

Q. As a stevedore? A. Yes, sir.

Q. On that date when did you commence your shift?

A. At 6:00 o'clock at night on May 13th.

(Testimony of Alfred L. Dillon.)

Q. What ship were you working on?

A. The Goucher Victory.

Q. And where was that located?

A. At Pier 38 on the north side.

Q. What work were you hired to do on that date?

A. As a stevedore.

Q. On the ship? A. Yes, sir.

Q. How many were there in your gang?

A. There was eight men and two deck men, and two dock men, that is the sling up men.

Q. Where were the eight men that you speak of working?

A. There was four on the port side and four on the [7] starboard side.

Q. And they were stowing cargo?

A. Yes, sir.

Q. What side were you working on?

A. I was working on the port side.

The Court: Four of the eight were on the starboard side and four of the eight on the port side?

The Witness: Yes, sir.

The Court: What deck?

The Witness: The lower deck, that is the lower tween deck it is called.

Q. Was there a hatch tender? A. Yes, sir.

Q. Where was he?

A. Up on deck, up on the poopdeck.

Q. That is the top deck?

A. That is the top deck, yes.

Q. And the winch driver?

(Testimony of Alfred L. Dillon.)

A. The winch driver was at the winches, back from the hatch.

Q. Do you know what kind of winches they were?

A. Electric winches.

Q. Who was the winch driver?

A. It was Paul Rigney.

Q. Who was the hatch tender? [8]

A. Snellman, I call him Snell.

Q. S-n-e-l-l-m-a-n? A. Yes, sir.

The Court: At this time, ask him what the number of the hatch was.

Q. What was the number of the hatch?

A. No. 1 hatch.

Q. And the type of goods which were being stored in this ship?

A. It was what you call general stores, that is everything, sacks of potatoes, cans of milk and so forth. It is general stores, that is what they call it.

Q. What had you done right after you went on duty at 6:00 o'clock in the ship?

A. We went down in the lower hold and started right in with the freight, with the general stores, and loaded.

Q. In the lower hold? A. Yes, sir.

Q. Right at the bottom of the ship?

A. Yes, sir.

Q. And these loads were brought from where?

A. From the dock.

Q. And they were placed in the lower hold? Just tell the maneuvers that are made to bring the load from the dock into the hold? [9]

(Testimony of Alfred L. Dillon.)

A. If you will excuse me, I will get down on the floor and I can explain that better to you.

The Court: If he would like to do that, it is agreeable to the Court if there is no objection.

Mr. Franklin: No objection.

The Court: You may do that.

Q. I am just talking about the load.

A. Here is the load, it comes over the ship and over the coamings, that is what you call the top hatch coamings. The load came over and then she came down and when she came down, she lands on what we call a skin, just like a floor like this. We call it a skin on the waterfront.

Q. That is the lower hold?

A. That is as far as you can go. Then on the starboard side there is what you call lockers. On the port side that locker was filled up, but forward, in the forward end of the ship, there is a big locker and that is where we were putting the stores, in these two lockers, one on the starboard side and one on the forward.

Q. When that is brought in, is the hatch tender in view?

A. The hatch tender is in view all the time of the hatch.

Q. And he watches the loading?

A. He watches all the maneuvers that is going on. [10]

Q. And gives the signals to the winch driver?

A. Yes, he has got to.

(Testimony of Alfred L. Dillon.)

Q. Then the loads are let down into the lower hold and then they are placed by you, is that right?

A. That's right.

Q. You had finished loading that, had you, while you were still on duty in the lower hold?

A. Yes, while I was on duty.

Q. The lower hold? A. Yes.

Q. And then following the completion of that job of storing in the lower hold, what was the next operation?

A. The next operation was to put the beam in, the strongback.

Q. The beam or the strongback?

A. Strongback, that is the proper name for it.

Q. Can you explain to the court what the strongback is and what it is intended for?

A. Well, the hatch was about twelve feet square, and there is a strongback goes across like this (indicating). When you get that in place, you put the hatches on there and that is the same as a floor.

Q. This strongback is in one piece, is it?

A. One piece, yes.

The Court: Where is it with reference to the center of the hatch?

The Witness: In the center of the hatch, Your Honor.

The Court: Does it extend fore and aft or athwartship?

The Witness: Athwartship, Your Honor.

Q. How is it fitted into the hatch?

(Testimony of Alfred L. Dillon.)

A. It fits into the slots. There is a slot on each side, port and starboard slot.

Q. When it is fitted in there, then it is secure, is it? A. It is secure, solid.

Q. Is there more than one beam in the hatch?

A. There is just the one beam in this hatch, two sections of hatches.

The Court: Those hatches are what material?

The Witness: Wood.

The Court: How would you describe the pieces of wood that constitute the hatches?

The Witness: They are about two and a half inches thick, and varies from two feet to three feet wide.

The Court: That would not be one solid board, would it?

The Witness: No, sir. There is several hatches, you see, to go on. [12]

Q. And this beam, is that of wood or is that of other material? A. Steel beam.

Q. With reference to weight, have you any idea of the weight of that beam?

A. It varies from the weights, because a very light beam in the lower hold, and they vary from four, five, six, seven, way up to eighteen hundred pounds. That is the top deck.

Mr. Franklin: We move the answer be stricken as not responsive. The question was how much did this beam weigh.

The Court: State how much this beam weighed, if you know.

(Testimony of Alfred L. Dillon.)

The Witness: It is hard to say if you haven't got the scales or anything. I wouldn't like to judge the weight.

Q. Can you estimate it?

A. I should judge between 400 and 500 pounds of my own knowledge.

Q. As you go higher up the beams get bigger, do they?

A. Oh yes, the stronger the beams are.

Q. Sir?

A. The stresses are way up high.

Q. On this date while on duty, were you in the act of 13 guiding a beam or strongback tween decks? A. The lower hold, yes I was.

The Court: Do you mean this so-called tween decks that you have referred to, by the lower hold?

The Witness: That is by the lower hold, yes, sir.

Q. The lower part of the ship was already loaded, wasn't it? A. Yes.

Q. How would you describe this? This beam was then the next layer? A. That is right.

The Court: "Layer" does not describe anything, Mr. Zabel.

Q. How far below the main deck was this beam, would you say?

A. You see, from the main deck—now, there is a poopdeck——

Q. The top deck?

A. That is the poopdeck.

(Testimony of Alfred L. Dillon.)

Q. From there?

A. I should judge that was about close to 20 feet. That is a guess, I don't know because you don't measure that stuff.

Q. How would you describe the particular location where this beam was? [14]

The Court: With reference to what deck it was.

Q. With reference to the lower hold?

A. You mean when I was landing it?

Q. Yes.

The Court: No. It may be that counsel understands this, but I do not. As I understand it, there is some cargo space in the farthest space down?

The Witness: That is right, Your Honor.

The Court: Had that space been filled?

The Witness: Yes, sir.

The Court: Where is the next space available?

The Witness: It is on the next deck.

The Court: Is there a deck next above that lowest available cargo space?

The Witness: When you come out of the lower hold.

The Court: You should answer the question directly, so that the record would show what your answer is.

The Witness: When you come out of the lower hold, and you come to cover up, that is the next deck.

The Court: With reference to this place where the accident occurred, what has the next deck to do with it, if anything?

(Testimony of Alfred L. Dillon.)

The Witness: This would be on what you call the lower tween deck.

Q. The lower tween deck, is that right? [15]

The Court: Where is that with reference to this cargo space that is lowest down in the ship?

The Witness: It is just above it.

The Court: It is the deck next above the lowest possible cargo space?

The Witness: That is right.

The Court: You refer to that as the lower hold, do you not?

The Witness: Yes, Your Honor. .

The Court: Is it a fact that you mean what some people call the lower tween deck?

The Witness: Well, I guess I do.

The Court: Do what you can to see if you can locate the place where the accident occurred.

Q. Where you were working, was that the lower tween deck, with the strongback?

A. With this beam at that time, it was what you would call the lower tween deck.

The Court: Where is it with reference to the deck next above the lowest possible available cargo space? How many decks were there between that and the cargo space that was the lowest space in the ship available for cargo?

The Witness: None. You had to come up on this deck. That is the only deck. [16]

The Court: Were there any other decks between the space lowest in the ship available for cargo

(Testimony of Alfred L. Dillon.)

and this deck where the accident happened?

The Witness: That was on the same—

The Court: Try to find out from this witness if he knows how to describe the deck the accident occurred on and how many decks there were between that and the lowest available cargo space.

Q. You had loaded the lowest available cargo space, hadn't you? A. Yes, sir.

Q. Where you were placing the strongback, was that the next deck?

A. The next deck, that's right.

The Court: The next below it or the next above?

The Witness: Above.

Q. The next above, is that right. A. Yes.

Q. And there was no other deck in between them? A. No other deck in between them.

The Court: You gave all the names by which you or other men working with you ever do refer to that deck?

The Witness: That is the names that we give them, yes, Your Honor. [17]

The Court: I want you to give all the names by which that deck is known to you or other men whom you heard mention it by name.

The Witness: We generally call it the lower between decks on the ship.

The Court: You sometimes today have said "lower deck," haven't you, without using the words "between decks"?

(Testimony of Alfred L. Dillon.)

The Witness: I did once, Your Honor.

The Court: May it be understood that when you say lower deck or lower between decks, that you are referring to this deck on which this accident happened?

The Witness: That's right, Your Honor.

Q. With reference to the strongback and its loading, just state where the strongback is taken from?

A. The strongback is taken from the top deck, that is what we call the poopdeck. That is not the main deck, but the poopdeck.

Q. How is it taken?

A. By the electric winches.

Q. How is it attached? A. By spreaders.

Q. How many spreaders?

A. One set of spreaders, that is what they call it.

Q. One set of spreaders. Just explain to the Court [18] what they are?

A. They are wire ropes, and there is a hook on it, on the end for the hook ends of the beam.

Q. On each end of the beam? A. Yes.

Q. Attached to these spreaders, what is the next segment before it is attached to the apparatus, that is the strongback down there?

A. The spreaders is made with a ring, and it is hooked on to what you call the hook, and then it goes like that with the hook on. Then it is lifted up and then it comes over the top hatch.

The Court: What does it come over to?

(Testimony of Alfred L. Dillon.)

The Witness: It comes over the top hatch and then down.

The Court: Where does it come from in the coming over process?

The Witness: From the top deck, the poopdeck.

The Court: Where does it come from on the top deck?

The Witness: The strongback?

The Court: The spreaders are attached to what?

The Witness: You hook them on to the strongback.

The Court: You have just been describing the spreaders. We are going away from the spreaders to the [19] to the other end of whatever it is that handles the spreaders.

The Witness: Well, the only way I can explain it is that the spreaders is hooked onto the cargo hook.

The Court: Then what is hooked on to the cargo hook?

The Witness: The spreaders.

The Court: What else above the spreaders?

The Witness: Nothing else above the spreaders.

The Court: How do you lift it?

The Witness: The falls.

The Court: The lower end of the falls is attached to the cargo hook, is that right?

The Witness: That's right.

The Court: To what are the other ends of the falls attached?

(Testimony of Alfred L. Dillon.)

The Witness: To the winches.

The Court: What do you call the part of the winch to which the——

The Witness: The drum.

Q. How many falls do you have?

A. You have two falls.

Q. What are they described as?

A. They are described as the yard arm and the midship arm. [20]

Q. The two of them? A. That is right.

The Court: The witness may resume the witness chair.

(Witness returns to witness chair.)

Q. Just state the course of the strongback from the time it left the poopdeck until it was brought into the hold of the ship.

A. How long it takes it?

Q. Just tell the course of it.

A. It came over the top coamings, and then it came down.

Q. During that time, was there a hatch tender there? A. Yes.

Q. What did the hatch tender do?

A. Well, I seen the hatch tender give the signal to come down a little.

Q. How does he give those signals, this particular hatch tender I am talking about?

A. He gives signals like this, and then he will put his arm like that (indicating) to stop. When he wants it to come back any more, he goes like this

(Testimony of Alfred L. Dillon.)

(indicating) with his fingers. That is, slow down.

Q. When you say come back any more, you mean let it down? [21]

A. That's right, if I say come back, but I didn't say come back. He just brought it down so far, so I could get hold of it to put it into the slot.

Q. Now I will ask you what time of the evening was it that you were placing this strongback in the tween deck hold?

A. It was about 9:30 at night.

Q. 9:30 p.m.? A. Yes.

Q. Just tell the Court your experience in connection with that operation.

A. I was engaged at the end of the beam to bring it from about a couple of feet from where it was hanging over to the slot, and when I got set in the slot, she just come right down on to my hand. She just came like that, quick, there was no signal whatsoever.

Mr. Franklin: I move that the answer be stricken. It is not responsive.

Mr. Zabel: Do you mean the last portion?

Mr. Franklin: Yes.

The Court: The last statement of the witness will be stricken as not responsive, "there was no signal given."

Q. About how far was the strongback above the slot at the time it dropped on your hand?

A. Well, it was between two or two and a half feet, [22] I should say.

(Testimony of Alfred L. Dillon.)

Q. Can you explain to the Court in a little more detail just how that happened and what you were doing prior to the time it fell on your hand?

A. Well, we will say that is the beam——

Q. Do you have a pencil there?

A. We will say this pencil is the beam. There is a slot here and there is a slot here (indicating), where that beam has got to go in. The spreaders is on like that, one that way and one this way (indicating), then the cargo hook and the falls from your winch. I was engaged on the port side and I was pulling this beam towards the slot. I had hold of the spreaders like this and like that (indicating) and then when he gets it over there, there was no signal to come back at all, and down she come and caught me. She pulled me right on to my knees and pulled my shoulder at the same time.

Q. You had an illustration drawn here of the way the beam appeared?

A. Yes, but there is just a little mistake on that. That midship fall should be straight up and down.

Q. It is not accurate as to distance, is it?

A. No, it is not accurate.

Q. It is entirely explanatory?

Mr. Franklin: With the Court's permission, might [23] I ask counsel who drew it?

The Court: You may do so.

The Witness: I got a little school boy to draw it for me.

Q. Under your direction?

(Testimony of Alfred L. Dillon.)

A. Yes, it was under my direction.

Q. You drew it as illustrative of the appearance of the strongback and the spreaders?

A. I went like this, draw a straight line and a ring here and the beam here.

Mr. Franklin: We have no objection if it is offered just for illustration.

The Court: You might ask him specifically if he thinks that fairly characterizes and explains his statements as to how the attachments were placed and how the accident happened.

Q. I will ask you if that illustrates and fairly represents the portion of your description of the accident as to how it happened and the type of strongback involved and the spreaders and the yard and port arm? A. You mean the midship?

Q. You called it the midship arm?

A. The midship fall.

Q. I want you to answer the question, does that fairly represent the situation there? [24]

A. Well, not exactly, no. The midship fall should be a little straighter up.

Q. A little straighter?

A. Yes, like that (indicating).

Q. And you have it on a slant?

A. It is on a slant, yes.

Q. You are talking about the midship fall?

A. The midship fall, that is on the port side.

Q. The starboard fall is about right?

A. The starboard fall is what you call the yard arm. That is just about right.

(Testimony of Alfred L. Dillon.)

Q. Will you show the Court——

The Court: You do not have to show me. I want to hear what he has to say. I will look at it later.

Q. Can you demonstrate to the Court just how you were placing this strongback in the slot and how it happened?

The Court: Mr. Zabel, I understood you were trying to clear this offered exhibit.

Mr. Zabel: In other words, I can offer the exhibit merely for illustrative purposes?

Mr. Franklin: No objection.

Mr. Zabel: I will offer it in evidence then.

The Court: Let it be marked Libelant's Exhibit 1, and the same is now admitted in evidence. [25]

(Diagrams marked Libelant's Exhibit 1 for identification.)

(Libelant's Exhibit 1 received in evidence.)

Q. Will you demonstrate to the Court just how this accident happened? With the Court's permission, I would like to have the plaintiff come forward.

The Court: He may do that.

Q. Just tell the Court about this accident, give the details.

A. The strongback came over the coaming, and way down until it got so far. When he got so far, he stopped and that is when you get hold, but it swung a little and we steadied it and I had this hand on the spreader here and I couldn't get it loose, so I was pulling this over to the slot. When I got to

(Testimony of Alfred L. Dillon.)

the slot, she just went right down and drawed me down with it, and that is when it dropped away from the spreaders.

Q. Is that the customary action?

A. No, it is not.

Q. Of lowering that strongback into the slot?

A. No, it is not.

Q. How is it customarily and properly brought up?

A. Customarily, you get it over there to the slot. I will say come back just a little, come back, come back, [26] and she goes in.

Q. Would your hand have been smashed had it been brought down in that manner?

Mr. Franklin: That is objectionable, if the Court please.

The Witness: No, it would not.

The Court: The objection is overruled. The Court will hear it.

Q. Were you able to extricate your hand from that slot and strongback?

A. No, sir, I wasn't.

Q. Just tell what immediately transpired afterwards.

A. I was held there for three or four minutes and then the boss came down.

Q. Who was the boss?

A. I don't know his first name, but I have known him ever since I came on the waterfront. His name is Petri.

Q. He was known as the foreman?

(Testimony of Alfred L. Dillon.)

A. Yes, sir, of the Rothschild Company.

Q. Was he there at the time you were hurt?

A. No, he wasn't. He came down after it was jammed in, and he came down and looked at the beam. I says, "Will you get this beam up?" and he says, "Just a minute, Dillon, I will [27] go up."

He went up two flights of steps and talked to the hatch tender and winch driver and come running down and say, "Just a minute, I will get it up." I was facing down like this (indicating) and now he says, "Lift her up, boys" so the hatch tender give him a slight signal, just like this (indicating) "Take it as easy as you can" and when it came up, it came up just like that and I had to shove it away with my hand, and I was held there for about three or four minutes.

The Court: By that, do you mean for three or four minutes?

The Witness: The beam was rested on my hand, held there.

The Court: All those connected with this case may be excused until 1:30 this afternoon.

(At 12:10 o'clock p.m., Thursday, June 23, 1949, proceedings recessed until 1:30 o'clock p.m., Thursday, June 23, 1949.)

ALFRED L. DILLON

Direct Examination (Continued)

By Mr. Zabel:

Q. Mr. Dillon, I believe you have reached the

(Testimony of Alfred L. Dillon.)

point where you were caught between the strongback and the slot? A. Yes, sir.

Q. They raised the strongback off your hand?

A. They raised the strongback by the electric winches [69] four minutes after. I was held there for four minutes.

Q. And then after it was raised, who did you see or talk to?

A. Well, I talked to Petri to get me to the doctor quick, and he took me to the Army doctor on the ship. The Army doctor says, "I will snap the fingers off for you." I says, "No, no, we've got doctors," just like that.

Q. Did you go up on top the deck?

A. I went up on top, on deck, yes.

Q. Who did you see there?

A. We went to midship of the ship. I seen the Army doctor.

Q. I mean, did you see any of the crew there?

A. No, I did not.

Q. Did you see the winch driver?

A. I seen the winch driver, yes.

Q. Where did you see him, down below, or on the deck?

A. The winch driver was standing at his post right between the winches.

Q. Did you have any conversation right then?

A. Yes. I told him, "Look here what I got." He said, "Can I help it? It slipped."

(Testimony of Alfred L. Dillon.)

Mr. Franklin: We object to this upon the ground that it is hearsay. It is self-serving.

Mr. Zabel: It is part of the res gestae. [70]

The Court: Have you any case that holds that it is part of the res gestae, something of that sort after he left the hold of the ship?

Mr. Zabel: I don't have any case here at present, Your Honor.

The Court: Do not ask any question until you get the case. Counsel may feel that the trial judge should know the law on a question like that, but we try a great many cases day in and day out, and I would like to be reminded of your authority upon which you claim that right.

We all know that formerly that sort of situation was not part of the res gestae. It is a question of whether modern cases have changed that or not. I can see how you might argue that that speaker had not had a chance to realize the accident before this man came up and confronted him with the appearance of his hand, or something like that, but it is all argument, and I do not think the law originally included that kind of an occurrence in the res gestae. Perhaps modern decisions do. I should have the benefit of them if there are any such, so go to some other subject until you get some law.

Q. You say you then went to the Army doctor?

A. The Army doctor right on the ship, in midship. [71] They have got a little hospital there right on the ship.

(Testimony of Alfred L. Dillon.)

Q. What was done there?

A. Well, they give me a shot of morphine, and he says, "We are going to snap the fingers off," and I says, "Hold on, we've got doctors." After he give me the morphine, he took the hand and dressed it up, and quarter to ten I got off the ship and went up to the hospital. It was 11:30 at the hospital before Dr. Smith came.

Q. What was done there?

A. They put me to sleep and operated on the fingers.

The Court: What is the first name of Dr. Smith?

The Witness: Edmund Smith.

Q. What is his office?

A. Medical Art Building.

The Court: On what street?

The Witness: Seneca.

The Court: On what north or south street?

The Witness: It is on the west side of the street, the Medical Art Building.

The Court: Which street is it on the west side of?

The Witness: Second Avenue.

The Court: You may examine.

Q. So Dr. Smith came, and you say they put you to sleep and treated you? [72]

A. Yes.

Q. Did they perform any surgery?

(Testimony of Alfred L. Dillon.)

A. I guess they did. You see, I was put off to sleep. I didn't know what they were doing.

Q. What was the condition of your right hand when you woke up?

A. The condition was, it was all splinted up and all bandaged up.

Q. Where did that run? A. What?

Q. From what point to what point did it run?

A. You mean the splints? It came from here (indicating) right down to the fingers, and sticking over like that.

Q. From the elbow?

A. No, below the elbow.

Q. Right below the elbow to the fingertips?

A. Yes.

Q. How long did you carry your arm in that splint?

A. For about two and a half to three months.

Q. How long were you in the hospital?

A. I was eight days in the hospital.

Q. What hospital?

A. Seattle General.

Q. Who removed the splint?

A. Dr. Smith. [73]

Q. Following that time, what was the condition of your arm and hand?

A. It was kind of raw.

Q. At that time, just tell the Court what was the condition of your arm, hand and shoulder?

A. I complained about my shoulder and he

(Testimony of Alfred L. Dillon.)

tapped me on the left shoulder and says, "That will be all right."

Q. What shoulder did you complain about?

A. About my right shoulder being pulled.

The Court: How long did you say your hand and wrist remained in the splints that were put on when you were in the hospital?

The Witness: Two and a half to three months.

Q. Following that time, did you have any treatment?

A. Yes. I used to go to Dr. Smith twice a week, then he would say, "Come next week, then twice next week," and that was right through until the insurance cut me off, with massages, heat and one thing and another.

Q. What kind of treatment did they give you during that period of time? A. Dr. Smith?

Q. Yes.

A. Dr. Smith used to get hold of the fingers and twist them and try to work them and then he would bandage them up. [74]

Q. Was that the treatment he gave you?

A. That is the treatment.

Q. Did he give you any medicine or anything like that?

A. Yes, I had about \$20 worth of medicine, I guess.

The Court: What was that, a tonic for your general system?

The Witness: I don't know what they called

(Testimony of Alfred L. Dillon.)

it, Your Honor, but it was a white bottle. It was like—I couldn't explain what it was, and I had to take two teaspoons full every day.

The Court: Do you know what it was for, what condition it was supposed to be for?

The Witness: I do not. I used to take capsules, pills.

The Court: It does not appear to me why one with broken fingers needs medicine inside his body.

The Witness: I can give you a description of what it was for as far as he told me, it was for to strengthen the bones of the arm, but the name of the medicine I do not know.

The Court: Do you think they called it calcium or anything like that?

The Witness: It was like calcium, yes, the color of it. [75]

Q. How long were you treated by Dr. Smith for this condition?

A. I was treated for about nine months.

Q. During this period of nine months, what was the condition of your arm and hand and shoulder?

A. The shoulder was painful. I complained to him and he said, "That will come back, that is all right." He had a brace from the wrist here up to here (indicating) with elastic bands on, and I used to pull them up tight, to pull the fingers around, and I could never get them any farther than what they are at the present date (indicating).

(Testimony of Alfred L. Dillon.)

Q. After the nine months' treatment, did you have any further treatment for your arm and hand?

A. Well, just as I could afford to pay for myself.

Q. What type of treatment did you have after that time?

A. Well, I used to get massage in the whirlpool, as they call it, and one thing and another, and twisting of my fingers to see if I could get them working, to be pliable.

Q. Have you had any recent treatment?

A. Not until these doctors.

Q. You have not had any treatment?

A. No, I haven't.

Q. Has the condition of your hand and arm changed any [76] in the last year?

A. No, it hasn't. It is the same way, been the same way since the accident.

Q. It is the same way since the accident?

A. Yes, sir.

Q. Just explain to the Court what trouble you have today with your right hand and arm?

A. The trouble?

Q. Yes.

A. Well, the trouble is that I get that pain from a cord here that runs all the way down the shoulder to the elbow. That is as far as I can feel it, and then this back, this shoulder, they call it a muscle or something like that, that goes down the shoulder way down into here.

(Testimony of Alfred L. Dillon.)

Q. Show the Court how high you can raise your right arm. Will you take off your coat?

A. Sure, I will take off my coat.

Q. Can you roll up your sleeve?

A. Do you want the shirt off?

The Court: You need not take your shirt off.

Q. Just roll up your sleeve. Show the Court how high you can raise your hand at the present time. A. That's it (indicating).

Q. Are you trying hard?

A. Oh, sure. You can come here yourself and pull it [77] up if you can.

Q. Raise your left arm. Could you raise your right arm the same as your left arm before this accident? A. Sure.

Q. Straighten your right arm out as far as you can. Are you trying to straighten it out?

A. I am.

Q. Now, straighten out your left arm. Before this accident, could you straighten your right arm the same as your left arm?

A. Yes, sure, perfect.

Q. With reference to your hand, open your right hand as far as you can.

A. Come on over here and try it. I can't. Anybody in the courthouse can come over and try it. I can't. I can take it like that (indicating) and it won't go down. I can take it and push it that way and it won't go down. Anybody can try it.

Q. Now grip your right hand.

(Testimony of Alfred L. Dillon.)

A. I can't grip. There you are, that is as far as I can grip it, just like a rock.

Q. Can you bend your fingers in your right hand?

A. No. There you are, that is as far as I can get them. It is pulling in here to beat the band.

Q. Has it been that way since the accident?

A. Yes.

Q. Was your hand and arm in that condition before this accident? A. No.

The Court: How long after the accident did it get in that condition?

The Witness: It was right after they took the splints off.

The Court: Has the condition of hardness of the fingers that now seems to be present in them increased in the last year or fifteen or eighteen months?

The Witness: It will be a slight increase if it was. It was like this when they took the splint off, just started right off like that.

The Court: Have the muscles above and around your wrist been growing hard like the tissues in your fingers?

The Witness: Yes, up in here it gets hard when you try to do anything. When you try to straighten it out, it gets firm.

The Court: Did any doctor ever tell you that your flesh was turning to bone?

The Witness: No, sir.

(Testimony of Alfred L. Dillon.)

The Court: No one has ever told you that?

The Witness: No, sir. [79]

Q. Is there a difference in the appearance of your right hand over your left hand as far as the smoothness of it is concerned?

A. You can see which way she swells up, like that, every day and every night she swells up.

Q. I mean the skin, is the skin of your right hand any different from the left?

A. You see, I can't feel this hand.

The Court: The appearance of the skin?

The Witness: Oh, yes, there is a little appearance.

Q. What is the difference?

A. It is a little darker, I guess.

Q. It is shiny, isn't it?

A. It is shiny, yes, down here.

Q. Up to the date of this accident, did you work quite steady?

A. Oh, yes, I worked steady for the Rothschild, loading and piling, and that is a dangerous job on the waterfront. I worked there years for them, and for Griffith & Sprague, all stevedoring companies on the waterfront.

Q. Did you have any illnesses of any kind during your last 25 years?

A. No illnesses at all. [80]

Q. Or any injuries?

A. Slight injuries, yes.

(Testimony of Alfred L. Dillon.)

Q. Did you have any injuries to your right arm, right hand or shoulder?

A. None at all, whatsoever, either hand.

The Court: How many times during five years before the accident had you been to see a doctor about your health?

The Witness: In five years, I was once.

The Court: Before that, had you been to see a doctor very often about your health?

The Witness: Just once in the five years.

The Court: Prior to the five-year period, do you remember any period prior to that when you had any sickness or physical injuries of any sort when you consulted a doctor?

The Witness: Yes, on a slight injury I had Dr. Smith again.

The Court: How long before this accident?

The Witness: That was in 1942, I think.

The Court: What kind of an injury did you get at that time?

The Witness: That time I got a bruise here (indicating) on the left side.

The Court: On your chest? [81]

The Witness: Yes, sir.

The Court: Did you ever have any bones broken before these bones in your right hand were broken?

The Witness: No.

The Court: When you were a young fellow, did you ever have any sickness of any sort?

(Testimony of Alfred L. Dillon.)

The Witness: Not that I know of, Your Honor.

The Court: Where did you live when you were in your youth?

The Witness: I lived in New York, Long Island, where I was brought up at.

The Court: Were you born there?

The Witness: Yes, sir.

The Court: Did anybody in your family to your knowledge ever have a disease where the flesh turned to bone?

The Witness: Not that I know of. My mother and father died when I was five years old and my brother died about seven or eight years ago and my sister died about six years ago. I am the only one left in the Dillon family.

Q. Your brother was a fighter, wasn't he?

A. Yes.

Q. What was his name?

A. Jack. [82]

Q. A fighter, a boxer?

A. What has that got to do with it?

The Court: I am trying to find out some explanation or some information about your appearance of general debility. How long has it been since you worked?

The Witness: It has been three years, one month and ten days to the day since I worked.

The Court: A person without work for that length of time must have gotten a lot of rest. His body must have received a lot of rest and relaxation during that time.

(Testimony of Alfred L. Dillon.)

The Witness: I have actually tried to water the lawn and one thing and another. You don't call that work for anybody.

The Court: You do not have the appearance of one whose body has been at rest for three years and not been working, or whose body has not been under strain or stress of labor. Can you account for that in any way from the fact that you do not appear to be robust in health?

The Witness: I am in perfect health.

The Court: Do you eat regularly?

The Witness: Oh, yes.

The Court: Do you enjoy your food? [83]

The Witness: Sure.

The Court: Do you have any indigestion?

The Witness: No, sir, no indigestion at all. My landlady and landlord is right in here and I eat with them regularly. They are sitting right over there.

The Court: During your life, have you eaten most of your food downtown or have you had food prepared for you especially?

The Witness: I have eaten with these people for 22 years.

The Court: At their family table?

The Witness: Yes, sir. Not regularly, when I was working I couldn't eat there.

The Court: But generally speaking, when you were not kept away from home by work, you had your food in their home?

The Witness: That is right, for 22 years.

Q. Have you been able to work since you were

(Testimony of Alfred L. Dillon.)

injured at the work you did before this accident?

A. No, I haven't because my job is a peculiar job. Anybody can tell you what a piling job is. The reason I got called on this job was because they were short of a man and I says, "All right, I'll take it."

Q. How much education did you have?

A. Seventh grade, not very much. [84]

Q. Do you know any other kind of work other than stevedoring or longshoring?

A. Yes, I went to school for an engineer, mining engineer, but a man at my age now couldn't get no place in that. They are looking for your diploma from college, a mining engineer from college and I am too old for that.

Q. Do you think you qualify as a mining engineer? A. No, I couldn't.

Q. You have never had any experience in mines, have you? A. Yes.

Q. You worked in mines? A. Yes.

Q. What kind of work did you do?

A. Gold mining.

Q. Would you be able to do that work now?

A. No. Where am I going to work a transit or a level with a hand like this? You have to turn them little screws or else you don't get it right on the lines. I quit the mines and went on the waterfront.

Q. What?

A. I quit mining and went on the waterfront.

(Testimony of Alfred L. Dillon.)

Q. What was your average earning capacity prior to the time you were injured?

A. I don't know. I have got a little thing here, perhaps that will settle it. Do you want to read this?

The Court: He might want to ask you questions and you might want to refer to that before you can make a definite answer.

Q. Prior to the time you were injured, you were working, were you not? A. No.

Q. Before you were injured?

A. Oh, yes, before.

Q. And how much a month were you making?

A. Well, here—

Q. Just answer the question first, if you can.

A. Well, I have made as high as \$500 a month on the waterfront.

Q. On certain months?

A. Yes, it varies.

Q. On the average, what would you say?

A. Between \$300 and \$400 a month.

Q. That is your earning capacity?

A. Yes, here is the capacity right here, \$1083.37 for two months' work, 57 days' work.

Q. For what year was that?

A. That was for 1946.

Q. That was the year you were injured?

A. Yes. If it came to that, I have had as high as [86] three and a half dollars an hour on the waterfront.

Mr. Zabel: You may examine.

(Testimony of Alfred L. Dillon.)

Cross-Examination

By Mr. Franklin:

Q. How long have you been down in No. 1 hatch on the evening of your accident, approximately?

A. Approximately, we went down there—it was 6:00 o'clock when we left the poopdeck to go down and we got down there about two minutes after six and from then on to 9:30 when this accident happened. They cut me off right at this accident, that was at 9:30. They cut me right off.

Q. You had been working then approximately three and a half hours? A. Yes, sir.

Q. Who was the winch driver?

A. The winch driver was Paul Rigney.

Q. What is his true name?

A. It isn't Rip O'Day. That is his nickname and Rigney is his name.

Q. And Snellman was that hatch tender on the deck? A. Yes, sir.

Q. This is a No. 1 hatch, is it not?

A. No. 1.

Q. That is on the forecastle? [87]

A. No, poopdeck.

Q. It is a smaller hatch than the other hatches?

A. Yes.

Q. And you were stowing food supplies, weren't you? A. That is right, general stores.

Q. Mr. Dillon, the Goucher Victory was a troop transport, wasn't she, or do you know?

(Testimony of Alfred L. Dillon.)

A. There was an Army doctor on there. I don't know if she was a troop ship or not but she was at the Army dock.

Q. During that period of time of three and a half hours, the winch leading into No. 1 hatch to your knowledge functioned perfectly?

A. No, sir.

Q. It did not? A. No.

Q. In what way did it not?

A. I couldn't tell you that because I was down below but I told them to get somebody to fix the winches.

Q. Don't tell us what you told somebody else, but of your own knowledge what was wrong with them?

A. How should I know when I was down below, but I could see that the winches wasn't going in right.

Q. I am not trying to trap you or argue with you. If you don't understand what I say, I will ask the question again. So sofar as you yourself know, there was nothing [88] wrong with those winches from your own knowledge prior to the time of the accident?

A. Yes, I do know there was something wrong to my own knowledge, yes.

Q. What was it then?

A. Well, I'll tell you. The loads would come in and when he come to stop, she would just do it.

Q. How frequently did that occur?

(Testimony of Alfred L. Dillon.)

A. It occurred quite a few loads.

Q. How many loads would you say?

A. I couldn't say now.

Q. Did you ever report that condition yourself to anybody?

A. Yes. I hollered up, I says, "Why don't you get somebody to them winches and fix them?"

Q. From where you were working, you couldn't see what went on on deck? A. No, sir.

Q. This No. 1 hatch tween decks is roughly about how wide and how long?

A. How wide, you mean from the side of the ship to the side?

Q. Yes.

A. From the sweatboards to the sweatboards, is that what you mean? [89]

Q. Yes, 12 by 15 or what?

A. Now wait, I think from the sweatboard on the port side to the starboard side would be about 18 or 19 feet. Of course, we didn't measure it. That is just guessing at this because when you are working, you have got no time to measure.

Q. Immediately before your accident, you had completed loading the lower tween decks and you were going to cover up?

A. That's right.

Q. And they sent a strongback from up above?

A. From the poopdeck over and then down.

Q. And as you described, that was hanging on a set of spreaders?

(Testimony of Alfred L. Dillon.)

A. Sure, you have got to have the spreaders or else they couldn't put it there.

Q. Who lowered that down to you, the winch driver? A. The winch driver, by signal.

Q. Where was that to be placed? What portion of the hatch was that strongback to be placed?

A. Well, I couldn't exactly say, but—

Q. Was it in the center or—

A. Now, wait, I will explain this to you. We will say here is the hatch, you understand, from here to there. Well, that is directly—I think it would be about the [90] center.

Q. About the center? A. Yes.

Q. And that beam was to be placed athwartship?

A. That's right, it runs across.

Q. Was it a king beam?

A. A K beam.

Q. Why do you call it a king beam? What is the difference between a king beam and a queen beam?

A. That's right, a base comes up about the height of the hatch, right in the center of it and you put the hatches against that, and they can't slip off and that is what you call a K beam.

Q. In other words, isn't it true that there is an extra flange along the top of the beam that they call a king beam in which the hatch covers—

A. Rest on, yes, on both sides.

Q. This was a king beam? A. Yes.

Q. When it was lowered down, with what speed was it lowered?

(Testimony of Alfred L. Dillon.)

A. Very slow speed until she was stopped.

Q. At the time it was lowered, who was watching the descent of this strongback into the hatch?

A. The hatch tender was right over the hatch like [91] this, giving signals.

Q. Did the winches stop at any time prior to your accident? A. What?

Q. What type of winches were these?

A. Electric winches.

Q. Did the load stop, or was the power turned off at any time before your accident?

A. Well, she was at a standstill, the strongback was at a standstill until we guided it into the slot.

Q. My question was, when it was lowered down, you testified about three feet above the hatch?

A. Two and a half to three feet.

Q. Who stopped it? Who ordered it stopped?

A. The hatch tender, they have got to do that.

Q. And then the winch driver, Rigney, put the winches in neutral and stopped it, is that right?

A. Yes.

Q. Are you sure he stopped it?

A. Yes, sir.

Q. You are positive he stopped it?

A. Sure.

Q. As a result of lowering that strongback down and stopping it, did it swing back and forth?

A. It swung a little, the same as all beams does on [92] a ship.

(Testimony of Alfred L. Dillon.)

Q. All beams swing when you are putting them in this position, don't they?

A. Yes, but you get hold of them and you steady that, you see.

Q. Was there a tag line on that spreader?

A. You mean a guy line?

Q. Yes, a guy line.

A. No, sir, no guy lines.

Q. When the strain was taken off the winches, or the current shut off, then the strongback was swinging gently thwartship, was it?

A. Just as they got it down, she just swung a little and I grabbed it.

Q. Where were you standing just at the moment you grabbed it with reference to this hatch, about the center of it on the port side?

A. The center of the hatch?

Q. Yes. A. No.

Q. In the center of the wing, I mean.

A. No, I was—I will have to get on the floor, you will have to excuse me.

Q. With the Court's permission—

The Court: You may do that. [93]

A. I want to explain this thing to you. We will say this chair is the hatch.

Q. Which is forward and which is aft?

A. This is forward, this is aft, this is the port side, this is the starboard side.

Q. Where were you standing?

A. This is the port side, starboard side, forward

(Testimony of Alfred L. Dillon.)

and aft. When the beam is coming in, we are all under here, and some is in the wing and I was standing here (indicating). They couldn't even see me where I was standing.

Q. At the time that this strain was taken off the strongback, what did you do then?

A. I went and got hold of the strongback to bring it into position.

Q. Which way was it swinging?

A. It was swinging this way, thwartship.

Q. Which way did you stand behind the strongback, or in what position?

A. Here was the strongback, here is the line with my hand on the spreaders, and this hand on the strongback.

Q. You were standing behind the strongback?

A. Not behind it.

Q. The strongback was in front of you, wasn't it?

A. No, it was like this (indicating).

Q. This strongback was swaying gently back and forth? [94] A. No, not then.

Q. When had it swayed?

A. Just when she came down.

Q. I understood you to say that after the strain was taken off the strongback, that it then swayed and you went to steady it?

A. That's right.

Q. And you then came forward and stationed

(Testimony of Alfred L. Dillon.)

yourself on the port side and reached over and grabbed the spreader?

A. I grabbed the spreader, yes.

Q. Why did you grab the spreader?

A. For to steady it, for to bring it back. You see, you have got to get hold of the spreader and beam to get it back.

Q. You wanted to put it right in the slot?

A. Yes, sir.

Q. Would you illustrate to the Court how you grabbed the spreaders, where your right hand was and where your left hand was?

A. My right hand was here.

Q. Where is "here"?

A. This is the beam, I am taking this as the beam.

Q. All right, that is the beam. What end of the beam was your hand on?

A. It was here (indicating). [95]

Q. Was it on the side, or what part?

A. Oh, yes, you get a grip on it.

Q. This isn't a king beam, but it is a reproduction of an ordinary beam. Would you illustrate to the Court the position of your right hand on that beam?

A. I will. Here is the port side.

Q. You are on the port side?

A. This is forward and this is aft. The beam is up here.

Q. About three feet, a little forward of the slot?

(Testimony of Alfred L. Dillon.)

A. Yes. That is the beam. Here is the spreader here, and a spreader here on the other side. I had ahold of the wire spreader like that, and my hand here.

Q. You had hold of the wire spreader with your left hand? A. That's right.

Q. Where did you place your right hand?

A. Right here (indicating).

Q. How far above the slot were you at the time you placed your hand on that top flange of the end of that strongback?

A. How far? About here, like this.

Q. About two feet? A. Yes.

Q. And you were pulling it back? [96]

A. For to get to the slot.

Q. With your right hand grabbing hold of that flange on the end? A. That's right.

Q. And then had you succeeded in bringing the strongback back over the slot?

A. Yes, and then she came right down without any warning.

Q. During all this operation, your attention was naturally focused on trying to get this beam lined up with the slot? A. That's right.

Q. You don't know what signals, if any, were given?

A. There was no signals at all at that time.

Q. But you didn't see anybody's signal given because you were concerned with your work?

A. There was no signaling, because he generally

(Testimony of Alfred L. Dillon.)

says, "Come back" and you can hear it.

Q. You didn't see anybody give any signals?

A. No, I didn't.

Q. You don't know whether the hatch tender on the deck, Snellman, gave a signal to Rigney to lower away, do you? A. I do not.

Q. How long in point of time was it from the time the [97] strain was taken off the strongback until the accident? A. How long?

Q. Yes. A. It wasn't even a minute.

Q. In your oral discovery deposition, which we took some time ago, Mr. Dillon, you said it was three minutes. I believe.

A. You are getting ahead of the story. It was just a minute I was caught with the beam, and held there for three minutes.

Q. I asked you in your oral discovery examination—counsel, I am referring to Page 15, lines 2 and 3—

"Q. How long was it from the time the power was off until your accident?

A. About two or three minutes, I should judge."

A. That I was held?

Q. No, I asked you, "How long was it from the time the power was off until your accident?" You said about two or three minutes.

A. I said it?

Q. Yes. A. Who to?

Q. To the reporter, when you were sworn under oath in your oral discovery deposition. Do you want to change that statement? [98]

(Testimony of Alfred L. Dillon.)

A. No, I wouldn't change anything.

Q. Would you say it was one minute or three minutes?

A. It was three minutes I was held there.

Q. It was one minute from the time the power was off until your accident? A. Yes, sir.

Q. When you put your right hand in the position that you did on the flange of the strongback, it was then right on a line, the right fourth and little fingers were then right over the slot, were they not?

A. See, this is the slot. Here is the beam. You hold it up. We will say that is two and a half feet. This hand was forward with the spreader. Now then, here is the spreader and I had the hand like this, and just getting it over the slot like this, and down she came, quick, because I couldn't get it out. It was sandwiched.

Q. At that time, just before, when you say this fell, your hand was right on top of that flange?

A. That's right, like this (indicating).

Q. When you felt or saw that the strongback was slipping or falling, why didn't you remove your hand?

A. If I had done that, if this hand had gotten loose, you understand—

Q. I am referring to your right hand.

A. That is all right, but the left hand has got something to do with this, too. If I could get loose of this hand, I would have had this hand clear

(Testimony of Alfred L. Dillon.)

and just shoved the beam in, but I couldn't get this hand loose. It was kind of a weight to balance.

Q. If I understand you, the strongback was just above the slot in position just a second or so before your injury, isn't that right?

A. I just got it over and then she come right down

Q. Therefore, when you felt the strongback slip, all you had to do was relax your grip?

A. I couldn't because I would be pulled down into the hatch by the spreaders.

Q. Why couldn't you relax your grip on the spreaders? A. I couldn't.

Q. What prevented you?

A. What we call the whisker of the wire.

Q. If you will be patient with me, explain why you couldn't relax your grip on the wire with your left hand and your grip on the flange with your right hand?

A. I am telling you. That hatch is this way, and this hand caught here with the wire whisker, and I couldn't get this hand loose and I wasn't going to let that beam hit me all the time.

Q. Mr. Dillon, to refresh your recollection, wasn't the reason that the power was turned off and the winches [100] put in neutral because of the fact that this strongback had gotten fouled up in the slot? A. No.

Q. Do you remember you or any other fellow longshoreman taking some hatch covers just before

(Testimony of Alfred L. Dillon.)

your accident and trying to knock or release the port side of the strongback from the slots where it had become fouled? A. No, I do not.

Q. You are positive that did not occur?

A. That wasn't done on my side. It wasn't done on the starboard side.

Q. How long after the accident was it before you learned what caused your accident?

A. After I learned?

A. I learned it, all right, the minute the accident occurred because I seen what happened.

Q. Mr. Dillon, to go back a minute, did you have your right hand under the base of that strongback? A. No, sir.

Q. It was always on top of the flange?

A. Yes, sir.

Q. How far in was the hole in which the spreader was fixed?

A. You are talking about the—— [101]

Q. The hole in the strongback.

A. You are talking about the spreaders, the hole goes into the strongback how far?

Q. Yes, in from the end of the beam itself.

A. You ought to know that if you have seen the beam.

Q. I am asking you.

A. I can explain it if you let me see that beam.

Q. Yes, surely. Just tell us generally, a foot, two feet?

A. I am not telling you anything. You can see

(Testimony of Alfred L. Dillon.)

what I am doing with this beam. Here is the beam here, and you have got the spreader hole here, and here, and a bigger hole here, and a smaller hole here, and a hole here.

Q. How far from the end of that beam was this hole you were working on?

A. Maybe four or six inches, I wouldn't say how far. That is all the answer I can give you.

Q. Mr. Dillon, did the hook from the spreaders become detached from the hole at any time?

A. No, sir.

Q. When you were leaning over that to pull the spreader back over the slot, was the weight of your body against that beam?

A. No, sir, not at all because the body against the beam, that would be dangerous. [102]

Q. This particular spreader, did it have toggles on it?

A. No, just hooks, pontoon spreaders.

Q. After your accident, you were under the care of Dr. Edmund Smith for many months?

A. Yes, sir.

Q. Did you cooperate with Dr. Smith?

A. I cooperated with him every time he told me to come down, yes.

Q. You took all the treatment he ordered for you? A. Yes.

Q. And you received for a considerable period of time until you brought this lawsuit, compensa-

(Testimony of Alfred L. Dillon.)

tion under the Longshoremen and Harbor Workers' Act? A. Yes, sir.

Q. Since you instituted this action, have you earned any money from any wages at all?

A. No, I have not.

Q. Have you looked for any employment?

A. Well, how am I going to look when this shoulder is pulling like the dickens, and this hand? Where am I going to get a job at this age? The union wouldn't even give me a job with a hand like this.

Q. My question was whether you looked for it?

A. My answer would be no, not unless this hand is [103] fixed up.

Q. In other words, have you a belief that until somebody fixes that hand up, you are not going to try to do anything?

A. Well, I have been trying to get to do a little business with this hand, and I am not getting it yet.

Q. Mr. Dillon, do you remember when you were receiving your compensation insurance that you were interviewed by Mr. Martin Packard on September 17, 1946? A. On September?

Q. Yes. Did you give Mr. Packard a statement about the occurrence of this accident?

A. I gave a statement to him?

Q. Yes. A. No.

(Statement marked Respondent's Exhibit A-1 for identification.)

(Testimony of Alfred L. Dillon.)

A. There was a statement made there, but it wasn't Mr. Packard. Who the man was, I don't know.

Q. I may be misinformed as to who took it.

A. That is the reason I said no to Mr. Packard.

Q. Was the man who made it a big fellow, an ex-pug with a flattened nose?

A. I don't know who it was. I didn't know anybody in [104] that office. I know the statement what he made. I didn't make it out.

Q. You signed it?

A. He made it out and I signed it with my left hand, block printed it.

Q. Handing you what has been marked for identification as Respondent United States of America's Exhibit A-1, I will ask you if that is the statement you signed?

A. Well, I am going to tell you there has been a lot added to this since I signed it. Now, this paragraph at the bottom was added some way or another because it wasn't like that. My name was there and he says, "That's all I want to know. There will be nothing added to it."

Q. Is that statement except for the last paragraph the statement that you signed? Is that your signature on it?

A. No, that is not my signature.

Q. You are positive of that?

A. I am positive.

Q. You did sign a statement?

(Testimony of Alfred L. Dillon.)

A. I will show you my signature right now.

Q. You did sign some statement?

A. Yes, I did, in that office.

Q. When you first looked at that statement, you said it was the statement you gave except for the last paragraph. [105] Now, are you now changing that to state none of that statement was ever signed by you, read to and signed by you?

A. Just a minute, let me read this please. I haven't read it.

Q. Take all the time you want, I beg your pardon.

A. Well, the top part is all right, but I never seen this bottom part.

Q. Now, your testimony is that the top part is all right and that is what you signed, but you didn't sign the bottom part?

A. This is not my writing here, because I can't block print like that with the left hand.

Q. I want to know whether or not you signed that statement, any part of that statement?

A. No, I did not.

Q. You would say that that signature, Alfred Dillon on the bottom of that statement is a forgery?

A. I couldn't say, but when I signed my name, it is always Alfred L. Dillon.

Q. My question is, is that your signature or is it not? A. I will simply say it isn't.

Q. You would say it isn't? A. Yes, sir.

Q. But you do remember giving some written

(Testimony of Alfred L. Dillon.)

statement [106] to some employee of the insurance company about September?

A. Or about that time, yes.

Q. And this is not the statement that you gave?

A. No. It wasn't on a white piece of paper, there was no lines on it.

Q. At the time the insurance company representative called on you, he asked you, didn't he, how you were getting along and how the accident happened? A. He called on me?

Q. Yes, or was that statement given at the office of the insurance company?

A. No insurance company called on me.

Q. I mean a representative, the man you gave this statement to?

A. They were in the office, in their office.

Q. So you went to the office of the insurance company?

A. To the insurance company, yes.

Q. And there you gave this statement.

A. I didn't give no statement. He had a white sheet of paper with this top part written on, and he says, "I'll guarantee you there'll be nothing added to it," and I signed it. I says, "I can't write." He says, "Try it down here, do the best you can."

Q. That is not the statement you signed at that time? [107]

A. It isn't the same piece of paper.

(Testimony of Alfred L. Dillon.)

Q. I say, it is not the statement that you signed at that time?

A. I only signed one statement. That's all they got.

Q. My question is, is that paper in front of you, Respondent United States of America's Exhibit A-1, the statement that you signed in the office of the insurance company?

A. The top part seems to be right, but this bottom part don't.

Q. Is that your signature on it? That is what I am trying to find out.

A. Well, my signature—if it was right, the L. would have been there in the center, because I always sign anything with the full name.

Q. My question is, is that signature on that exhibit your signature?

A. Do you want to see my signature?

Q. No, I am asking you to identify it, if you can.

A. You see where that is—

Q. I say, is that your signature?

A. No, it isn't.

Q. At the time you had this conversation in the Vance Building with this insurance company representative, did you make a statement to him at that time that your accident wasn't the result of any mechanical defect on the part of the [108] winches?

A. No, there was nobody ever asked me anything about that.

(Testimony of Alfred L. Dillon.)

Q. This insurance representative didn't ask you any such question? A. No.

Mr. Franklin: That is all, thank you.

Redirect Examination

By Mr. Zabel:

Q. The statement that you say you gave one there, was that in your handwriting or was that in the handwriting of the man that made the statement?

A. It was already written out on a piece of white paper.

Q. And the one that you signed, did you read it over before you signed it?

A. Yes, I could read it right off without any sheet of paper, what was on the sheet of paper. It was where was I born, was I married, single or so forth, and my home address, where I live right now. He says, "I'll guarantee you there'll be nothing more on that," but it was on a white piece of paper. I put my full name on it.

Q. At that time, this man asked you how it happened?

A. Nobody asked me in that office how anything happened. [109]

Q. How you got your hand hurt?

A. No, they never asked that question.

Q. On this statement that was signed, what was that for?

A. That was just where I was born, was I ever

(Testimony of Alfred L. Dillon.)

married, my mother's and father's name, and so forth, such as that. It was on a white piece of bonded paper, as you call it.

Q. Counsel asked you if there were any guide lines on this spreader?

A. No, there was no guide lines.

Q. Are there supposed to be guide lines on it?

A. Yes, sir, for safety.

Q. If there had been a guide line——

Mr. DuPuis: On behalf of the third party respondent, I object. This is beyond the issue of the pleadings, no allegation of that sort in the complaint.

Mr. Franklin: I join in that objection.

Mr. DuPuis: I move to strike the answer.

Mr. Zabel: He brought up the issue.

The Court: The objection is overruled, in view of the cross-examination.

Q. If the guide lines were there, would you then use the spreaders to hand onto?

A. No, I would not. I would hold the guy line, that is what they are on there for, for safety.

Mr. Zabel: I think that is all. [110]

Mr. Franklin: That is all, thank you.

The Court: You may step down.

(Witness excused.)

The Court: Call plaintiff's next witness.

Mr. Zabel: Mr. Brooks.

Mr. Franklin: If the Court please, may I ask

(Testimony of Alfred L. Dillon.)

Mr. Dillon one last question at the table here? It calls for a yes or no answer.

The Court: You may do so.

Mr. Franklin: Was this beam you were injured on the first beam you put in?

The Witness: There was only one beam in that hatch.

Mr. Zabel: Are the guide lines part of the ship's equipment?

The Witness: They are supposed to be for safety. That is in the safety program on the waterfront.

DAN BROOKS

called as a witness by and on behalf of libelant, having been first duly sworn, was examined and testified as follows: [111]

Direct Examination

By Mr. Zabel:

Q. What is your name?

A. My name is Dan Brooks.

Q. What is your occupation?

A. Longshoreman.

Q. How long have you been such?

A. 32 years.

Q. On or about May 13, 1946, were you in the gang with Mr. Dillon stowing cargo in hatch No. 1 of this ship Goucher Victory? A. Yes, sir.

Q. What side was Mr. Dillon working on of the ship? A. On the port side.

(Testimony of Dan Brooks.)

Q. What side were you working on?

A. On the starboard side.

Q. Do you recall the accident to Mr. Dillon while you were on duty at that time?

A. Yes, I do.

Q. Did you actually see the strongback drop on the libelant's, Mr. Dillon's, hand at that time?

A. I didn't see it drop, I seen it after that.

Q. But you didn't actually see it drop on his hand? A. No, I didn't. [112]

Q. But after it dropped on his hand, what did you do?

A. I run over there to see if I could help.

Q. Was the foreman there at that time, Mr. Petri?

A. I don't remember him being in that deck until the accident happened.

Q. Was he there before it happened?

A. No, I don't remember seeing him there before it happened.

Q. With reference to electric winches, have you worked on ships using electric winches in the past several years? A. Many times.

Q. Steam winches?

The Court: That last statement is not responded to. Is it a statement or a question?

Mr. Zabel: I will restate it, Your Honor.

Q. Have you worked on ship with all types of winches? A. Yes, I have.

Q. What types? A. Steam and electric.

(Testimony of Dan Brooks.)

Q. And this ship had what type of winches upon which you were working?

A. This ship had electric winches.

Q. From your experience, where electric winches were [113] used, what have you to say with reference to their safety?

Mr. Franklin: If the Court please, that is objected to. There is no contention made in the libel that the use of electric winches is unsafe. The particular charge made is a specific charge of negligence. It is highly improper.

The Court: Sustained.

Mr. Zabel: You may cross-examine.

Mr. Franklin: No questions.

The Court: Step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Zabel: Mr. Rigney.

PAUL RIGNEY

called as a witness by and on behalf of libelant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Zabel:

Q. What is your name?

A. Paul Rigney.

Q. Will you spell your name, sir? [114]

A. Paul R-i-g-n-e-y.

(Testimony of Paul Rigney.)

Q. Otherwise, are you known by another name?

A. Yes, sir.

Q. What is that? A. Rip O'Day.

Q. You are called that by your fellow workmen?

A. Yes, sir.

Q. You live in Seattle? A. Yes, sir.

Q. What is your occupation?

A. I am a longshoreman, stevedore, and winch driver.

Q. How long have you been engaged in that type of work? A. Since 1927.

Q. Was that all carried on here in the Seattle waterfront? A. Yes, sir.

Q. On May 13, 1946, what was your occupation?

A. I was a winch driver.

Q. Were you a winch driver on the MS Goucher Victory on May 13, 1946? A. Yes, sir.

Q. What type of winches did it have?

A. Electric winches.

Q. Do you recall when you went on duty? [115]

A. Six o'clock.

Q. P.M.? A. Yes, sir.

Q. Do you recall an accident with reference to the libelant in this case, Alfred L. Dillon?

A. Yes, sir.

Q. Where were the loads being placed?

A. In the lower hold.

Q. Of which hatch?

A. No. 1, lower hold.

Q. Had you loaded cargo in the lower hold first?

(Testimony of Paul Rigney.)

A. Yes, sir.

Q. At the time of the accident, what about the lower hold? Was that filled up?

A. That I couldn't say because I didn't see the lower hold.

Q. At the time of the accident to Alfred R. Dillon, what was being hauled with the electric winches and equipment? A. I didn't hear that.

Q. At the time of the accident, what were you moving?

A. At the time of the accident, we was loading a beam on the poopdeck to the lower tween deck to put it in the socket. [116]

Q. In operating the electric winch, do you operate it in obedience to signals given by a hatch tender? A. Yes, sir.

Q. Who was the hatch tender at that time?

A. Mr. Selman.

Q. How do you spell that?

A. I guess it is S-e-l-m-a-n.

Q. Will you state the course of the movement of the strongback from the time it left the poopdeck until it was brought down to the tween deck hold?

A. Yes. They had to hook it up with the spreaders, had to lift it, lower it down to the lower tween decks where I was given the signal to come down with it. Then I was stopped, then they gave me another signal to come back, and then the brake didn't hold and bam, down she went.

Q. You say the hatch tender was giving you a

(Testimony of Paul Rigney.)

signal to let it down. How do you let those down, fast or slow?

A. You come back easy, like this (indicating). This means slow. When he goes all the way down like that (indicating) it means a little faster, and he kept giving me this, see (indicating).

Q. What happened? You say she dropped down? A. Yes.

Q. What happened?

A. The brake didn't hold. Sometimes your points [117] don't catch and you jump them points and it releases itself automatically. Don't do it all the time, though.

Q. When this beam was dropped down, what was done?

A. The only thing I know, it got Mr. Dillon's hand caught and I heard a lot of hollering. He says, "Hold them winches," and a lot of hollering, and the guy says, "Hold everything" and I heard a lot of noise down there. I guess they was a little excited themselves, and Mr. Dillon's hand was caught. That is all I know, and I guess they tried to pry it up with a hatch according to what I heard, I don't know.

Q. Did you finally lift the beam off?

A. Yes, I am pretty sure.

Q. Off his hand, I mean? A. Yes.

Q. Had you had any difficulty with the winches prior to that time? A. Yes, sir.

Q. Just state what difficulty you had.

(Testimony of Paul Rigney.)

A. Well, the brakes didn't hold on two occasions.

Q. What happened when they didn't hold?

A. You come back and it seemed like she jumped the points and bam, she'll go right back.

Q. Did you make any complaint?

A. Yes, sir. [118]

Q. Before this accident?

A. Yes, sir, twice.

Q. Following this accident, was anything done to remedy the situation?

A. Yes, we stopped and examined all the gear.

Q. Was anything done with reference to the winches?

A. Well, we tried the controls and everything, and adjusted them on each point. Then we come back and done the same thing. Sometimes she would hold; sometimes it wouldn't hold.

Q. How do you tighten those brakes?

A. Well, to tighten those winches, there are certain kinds of electric winches——

The Court: No, this particular winch that had its brakes slip on the occasion of the accident.

The Witness: Well, that I couldn't say because the guy fooled around there with something.

Q. How is that?

A. That I couldn't say because the guy fooled around there with something. He done something to the winches twice.

Q. Who was that?

A. I should think it was the deck engineer.

(Testimony of Paul Rigney.)

Q. You say he worked on the winches there?

A. Yes. [119]

Q. In other words, you didn't do the tightening or the work? A. No.

Q. That was done by the ship's crew?

A. That's right.

Mr. Franklin: That is objected to as leading.

The Court: Sustained.

Q. As far as you yourself were concerned, did you tighten the winches? A. No, sir.

Q. Or have anything to do with that part of it?

A. No, sir. I only represent one union, I don't belong to two of them.

Q. Could you give an estimate of the weight of that beam that was lowered in the No. 1 hold?

A. It wasn't so big a beam as some beams we handle. I should judge it weighed about 1,000 or 1,200 pounds.

Q. It is steel, is it? A. Yes, sir.

Mr. Zabel: You may cross-examine.

Cross-Examination

By Mr. Franklin:

Q. Mr. Rigney, where did this accident happen? Where was the vessel? [120]

A. Pier 37 North, at the Seattle Port of Embarkation.

Q. When did you go to work?

A. We went to work six o'clock.

Q. Were you driving winches continuously until

(Testimony of Paul Rigney.)

Dillon's accident and afterwards? A. No.

Q. There were times when you would be relieved? A. That's right.

Q. Was the Goucher Victory a new ship?

A. Well, I should imagine it was built during the war. I don't know the year it was built.

Q. It had regular conventional electric winches on her? A. Yes.

Q. You said that you had some trouble with the winches on two occasions before Dillon's injury?

A. Yes, sir.

Q. Fix the time of the first trouble.

A. Well, I should judge about 7:30.

Q. Let me ask you, before you started in winch driving, you tried the winches yourself, didn't you?

A. Yes.

Q. That is customary and is always done?

A. That's right, and see that the gears are safe.

Q. Those stevedores won't work if the equipment is [121] not safe? A. That's right.

Q. And you tested them when you first went to work that evening? A. Yes.

Q. What tests did you give them?

A. We went up and down on them.

Q. And found they operated satisfactorily?

A. Yes.

Q. You were satisfied to work there?

A. Yes.

Q. You say you noticed something occurring at 7:30? A. Yes, sir.

(Testimony of Paul Rigney.)

Q. What was that?

A. The same thing that happened when I was lowering the beam.

Q. What was it happened at 7:30?

A. Slipping of the brake.

Q. How far did it slip?

A. I don't know about that. It must have slipped about two or three feet.

Q. Where was the load at the time it slipped, or did you have a load on it?

A. Yes, we were lowering the lower hold.

Q. And it slipped two or three feet? [122]

A. Yes.

Q. Did you report that condition to the foreman of the stevedores?

A. I reported it to the hatch tender.

Q. If there is a defective condition present, the ordinary customary procedure is for you to report it to your foreman so he can take it up with the ship's personnel, isn't it?

A. My hatch tender is my superintendent and he takes it from there on.

Q. In other words, whether he reported it to the foreman, you don't know? A. No.

Q. Would you expect him to report a condition of that kind to the foreman?

A. Yes, sure.

Q. Was anything done at 7:30 with reference to any repairs conducted on them?

A. Yes. A man come around and tinkered around with them winches.

(Testimony of Paul Rigney.)

Q. That was 7:30? A. Yes.

Q. Who was this man that came around?

A. I don't know. He was a member of the ship's crew. [123]

Q. Do you know how many of the ship's crew were on board the vessel? A. I do not.

Q. You know there is a night mate aboard the vessel? A. Yes.

Q. Did you ever report that to the night mate?

A. It must have been reported to him because—

Q. I say, did you? A. I did not.

Q. Do you know if Selman did?

A. Somebody reported it, I don't know.

Q. Who is the ship's personnel that ordinarily would be called if there is anything wrong with the functioning of the winches?

A. The First Mate, I guess, and then the electrician.

Q. And there was an electrician aboard that night, was there not? A. I don't know.

Q. When was the next time that there was anything wrong with this?

A. About 20 minutes to nine, or somewhere in there.

Q. That would be about 8:40? A. Yes.

Q. What happened then? [124]

A. The same thing.

Q. What did you do then?

A. We stopped again.

Q. And who did you report the condition to?

A. The hatch tender.

(Testimony of Paul Rigney.)

Q. Was anything done about it? A. Yes.

Q. What was done?

A. The man came up and looked at it again, that's all.

Q. Did he do anything?

A. Not that I recall.

Q. Just look at it? And you continued, did you not? A. Yes.

Q. At the time, you couldn't see this accident from where you were handling the winches?

A. No, sir, that is a blind hatch.

Q. By that, you mean there is a pontoon that would obstruct your view? A. Yes.

Q. You had to rely on the hatch tender to give you signals? A. That's right.

Q. Selman, the hatch tender, was foreward of your winches at the other end of the hatch, wasn't he? [125] A. Yes.

Q. What is the width of the hatch?

A. I don't know.

Q. Getting down to the occasion of this injury to Dillon, you say that you were lowering the strongback into position? A. Yes.

Q. As you lowered that, there were spreaders attached to this on the poopdeck? A. Yes, sir.

Q. Selman gave you a signal to lower away?

A. Yes, sir.

Q. How do you do it ordinarily with your electric winches? How do they operate?

A. I came back one notch.

(Testimony of Paul Rigney.)

Q. When you are completely stopped, that is neutral, is it? A. Yes.

Q. So you went from neutral up one notch?

A. Yes.

Q. Did that lower that strongback slowly?

A. Yes.

Q. Very slowly? A. Yes.

Q. One notch? [126] A. Yes.

Q. Who directed you when to stop?

A. The winch driver.

Q. Selman told you when to stop?

A. Well, it already had dropped, see.

Q. Let's go through this again. You are lowering the strongback? A. Yes.

Q. Then you got a signal from the hatch tender to stop? A. Yes.

Q. And you did stop, didn't you? A. Yes.

Q. You put it in neutral? A. Yes.

Q. Is it customary when you bring the winches to a stop when you are lowering a strongback weighing approximately 1,000 pounds or so that you have testified, that it sways a little back, swing back and forth? A. Yes.

Q. How long in point of time until you executed your next movement?

A. If I recall right, he says, "Come back" and then—

Q. I say, how long until you got your next order from Selman? [127]

A. For as long as it took them to get the beam in place.

(Testimony of Paul Rigney.)

Q. That does not answer my question. How long were you stopped before you got another order from Selman to come ahead?

A. I will say about a minute.

Q. Could you see yourself what was happening below in that minute? A. No.

Q. Then the next thing, you got an order from Selman to do what? A. To come back.

Q. By come back, what do you mean, raise or lower? A. Lower it.

Q. So you got that order from Selman to lower it? A. Yes.

Q. Could you tell about how far above the slot you were from handling the winches and the amount of falls that were out? A. No.

Q. So you got an order from Selman to gradually lower away? A. Come back, yes.

Q. And you did that? A. Yes, sir. [128]

Q. And the winches responded to that order?

A. No, that is when they gave way.

Q. But as I understood, you already had the order from Selman to lower away? A. Yes.

Q. And you proceeded to do that?

A. Yes.

Q. Then the next thing you knew, you learned Mr. Dillon had been hurt? A. Yes.

Q. Do you remember an incident occurring there where this strongback became fouled up, got caught in the slots, and they had to try and dislodge it?

A. Only what I heard.

(Testimony of Paul Rigney.)

Q. What did you hear?

A. I heard that this guy pried a beam out to get his hand clear.

Q. You heard, didn't you, that this strongback got wedged in or fouled in the port slot, and an effort was made to try and free it? A. Yes.

Q. And the stevedores used hatch covers in an effort to dislodge it?

A. That's what I understand. I don't know if it is true or not. [129]

Mr. Franklin: That is all, thank you.

Mr. Zabel: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Zabel: Mr. Sellman.

CLAUD SELLMAN

called as a witness by and on behalf of libelant, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Zabel:

Q. What is your name?

A. Claud Sellman.

Q. Spell your last name.

A. S-e-l-l-m-a-n.

Q. You are a resident of Seattle?

A. Of Kenmore, north of Seattle.

(Testimony of Claud Sellman.)

Q. In King County? A. Yes, sir.

Q. What is your occupation?

A. Longshoreman. [130]

Q. What type of work do you do in connection with longshoring?

A. Deck mate, they call it, winch driver, hatch tender.

Q. You have acted both as winch driver and hatch tender? A. Yes, sir.

Q. Were you on the ship, MS Goucher Victory, on May 13, 1946, at the time Mr. Dillon was working in the hold of the ship?

A. I was there at the time he was hurt, yes.

Q. What was your capacity?

A. Hatch tender.

Q. What time did you go on duty?

A. I am not sure that night whether we started at six or seven.

Q. P. M.? A. Yes, sir.

Q. But you were hatch tender at the time of an accident to Mr. Dillon's right hand?

A. I was.

Q. What type of winch was on this ship?

A. Electric winches, I don't know which particular make.

Q. You had loaded cargo in the lower hold before [131] this accident, as I understand it, the No. 1 hatch? A. That's right.

Q. Following that, the strongback or beam was being—

(Testimony of Claud Sellman.)

Mr. Franklin: Don't lead the witness.

The Court: Sustained.

Q. Was there a beam or strongback to be placed tween decks on the No. 1 hold?

A. That's right.

Q. Where was this beam or strongback?

A. I believe it was on deck, if I remember correctly.

Q. On the top deck? A. Yes, sir.

Q. How was the strongback connected to the apparatus for the moving of this strongback down to the tween deck hold?

A. They had a pair of spreaders. I don't know whether these had hooks or toggles on them. I don't usually handle them myself so I don't remember. I don't remember which particular type they were, it has been quite a while ago.

Q. Do you recall the movement of the strongback from the top deck down?

A. Yes. Wait a minute, I'm not just positive even that this beam was on the top deck. I think so, but this was quite a while ago. [132]

Q. But it was on an upper deck?

Mr. Franklin: Don't lead the witness, please.

Mr. Zabel: All right, I will withdraw it.

The Witness: That is where we usually put them, so I presume it was. We usually put the beam in that hold or on the top deck.

Q. What was your duty as hatch tender?

A. I was giving signals to the winch driver.

(Testimony of Claud Sellman.)

Q. In this case, did you give signals for the movement of this strongback?

A. I give the signal, yes.

Q. Just state the movement of it from the time it was moved and lowered.

A. Well, we picked up this strongback with the winches and as I say, I don't know which deck it was on for sure. I presume it was on the top deck, I know it was pretty high. They got hold of it down below and stopped 'til they got hold of it down it over the socket, when they got hold of the beam to steady it over the socket to land it.

Q. Were you in a position where you could see Mr. Dillon working?

A. Yes, sir, I could see him plain.

Q. You could see him at all times?

Mr. Franklin: Objected to as leading. [133]

The Court: It is sustained.

Mr. Zabel: I will strike that.

Q. Is it a part of your duty to watch the workman working in the hold as well as the winch driver?

A. That's what I'm supposed to do when you are tending hatch, yes.

Q. Now, just state in your own words how this beam was brought down and what you observed.

A. Well, we lowered this beam, as I say, into position where a man could get hold of it on each end to land it in the pocket and they had hold of each end. This beam was, I would guess, approximately two feet high above the pocket, so I always

(Testimony of Claud Sellman.)

make a practice of coming down when it just barely clears the pocket, within a few inches, so it would be sure and hit it and then drop it.

In this case, one man had hold of each end of the beam. It is only a light beam landing in this pocket. As I say, it was a couple of feet high yet, so I stick my hand out and give Rigney a signal to come back. I intended to lower it to within six inches of the pocket and stop to be sure I hit the pocket. When I gave the signal later to come back, the beam come right on down and dropped.

Q. What caused that?

Mr. Franklin: If you know.

A. Well, I know pretty well the only way it could [134] happen in this type of winch because it had been happening before that there was a lag between the time that a brake is released and the power goes on, run through those notches, they call them, does not run through very fast.

Q. The notches are on the winch?

A. They are on these handles, yes, sir. There is five notches on each side; one side hoists and one lowers and it would happen on this winch before and we had notified them the trip before we had trouble with it. I told the electrician on duty to see if he could get that fixed. He said he couldn't fix it that night but he would get at it tomorrow. That was the previous trip of this ship.

Mr. Franklin: The previous trip?

The Witness: Yes.

(Testimony of Claud Sellman.)

Mr. Franklin: A month previous?

The Witness: Something like that.

Mr. Franklin: We move the answer be stricken, if the Court please, on the ground it is immaterial, a month earlier.

The Witness: I am talking about this same winch.

Q. The same winch and the same ship?

A. The same winch and the same ship.

Mr. Zabel: I think it is material unless they [135] show they made repairs or something in between. They were having trouble with it 30 days before and they didn't do anything about it. I think it would be material.

Mr. Franklin: I submit, if the Court please, what happened 30 days before is utterly irrelevant, and immaterial to the specific allegation of negligence occurring a month later.

The Court: The objection is overruled.

Q. Just go ahead.

A. This night, as I say, the reason this dropped—that is the question I am answering, I believe—I consider this a reason and I asked them to get this winch fixed so when it commenced to hit this night, the first time I had the winches, I told Rigney, "You want to watch that port winch because she slips sometimes. You have got to be prepared to stop a few feet before you really intend to because sometimes she will drop several feet before she takes ahold when you are either stopping or starting. When you come to a stop if you run through those

(Testimony of Claud Sellman.)

notches slowly just about the time before you stop, it will drop several feet like that."

I told Paul that night, "This winch is in the same condition it was before," so when this happened, I figured what must have happened because you can't come back that [136] fast with power on those electric winches. They won't take off that fast.

Q. How are they supposed to operate?

A. They are supposed to operate so that it is either on power or on the brake at all times.

Q. Are you supposed to be able to control the speed at all times?

A. They are supposed to be under perfect control at all times, like when lowering a beam like this, you would only bring it back in the second notch in lowering, and you want to go down at a speed of just about like that (indicating) but when it drops like that, as I said, the man is caught. I asked Paul what happened. After we got him loose, he says, "Well, it just dropped."

Q. Was the beam then removed from his hand?

A. Yes. I held it there for a while. I wanted to know whether they could lift it off his hand because I didn't want to pick it up with the winch on account it might tear his hand. I think the walking boss, Petri, was around there some place right close, and I said to him, "Shall we pick it up?" He said, "Wait 'til I go down there." He run down the steps and looked and says, "Pick it up," so I give him the signal to pick it up.

(Testimony of Claud Sellman.)

Q. Was he in the hold before this accident happened?

A. He was either on deck right when it happened or [137] on the stairway leading down to the lower hold. He was around there close but it has been quite a while ago and I can't remember exactly where he was, but I was talking to him at the time or just after it happened.

Mr. Zabel: You may cross-examine.

Cross-Examination

By Mr. Franklin:

Q. This happened quite a long time ago and, of course, one's recollection isn't so good three years afterwards, is it? A. No, that is true.

Q. You said that you had worked these winches on a previous trip of this vessel?

A. That's right.

Q. And you talked to the chief electrician?

A. No, it was whoever was on watch. It was at night.

Q. Who is the usual member of the ship's crew in charge of servicing the electric winches?

A. Who is?

Q. Yes.

A. I look around there and I find an electrician on duty, that's all.

Q. You say that a month previously, you had talked [138] to the electrician on duty?

A. That's right.

(Testimony of Claud Sellman.)

Q. Do you know his name? A. No.

Q. When you were assigned to this job a month later, you had in mind that you had this conversation with the electrician a month earlier?

A. Sure, as soon as I found out the winches were the same way and they wasn't fixed.

Q. As hatch tender, you were in charge of the gang? A. That's right.

Q. Before you or Rigney started to use those winches, did you test them?

A. I don't think so, especially.

Q. As a matter of fact, you always test winches, don't you, to make sure they are satisfactory?

A. Usually, run through the notches and see if they run.

Q. And that was done by you or Mr. Rigney?

A. I think he drove the first hour.

Q. And they were satisfactory, weren't they?

A. I don't know. You drive them whether they are satisfactory or not.

Q. You know, you were there, don't you?

A. Sure, I was there. [139]

Q. There wasn't anything wrong with the winches up until Mr. Dillon's accident, was there?

A. Yes.

Q. What was it?

A. The same thing, when you are going to land a load, sometimes it will slip two or three feet before it stops.

(Testimony of Claud Sellman.)

Q. How many times did that occur before Mr. Dillon's injury?

A. Maybe half a dozen times, maybe not.

Q. Did it, half a dozen times?

A. When I was over the hatch, I always make a practice to give him the signal to stop quite a ways up.

Q. I am asking you how many times the winches slipped after they were stopped on the evening of Mr. Dillon's injury before his accident occurred?

A. After they were stopped? I didn't say anything about them slipping after they were stopped.

Q. What did you say was wrong with them?

A. When you are coming to a stop, sometimes they would drop before the brake caught.

Q. How many times did that occur?

A. I didn't keep track of it.

Q. Was it a matter of any importance to you?

A. Not an awful lot, as long as it didn't spill any [140] loads or land a load on anybody.

Q. Do you think the winches were defective in any way? A. To that extent, yes.

Q. Did you report that alleged condition to the foreman, Mr. Petri?

A. I don't know whether I did or not.

Q. Wouldn't you if you felt it was dangerous or hazardous?

A. I tried it the previous trips and didn't get any results. I know on these Army ships, it is no use.

(Testimony of Claud Sellman.)

Q. Did you report this condition to Mr. Petri?

A. I think Paul did.

Q. Mr. Rigney reported it?

A. I think so.

Q. You didn't report it?

A. I don't think I said anything about it to him.

Q. As a matter of fact, as a member of the Longshoreman's Union, you have a contract that you are not permitted or required to work under unsafe conditions? A. That's right.

Q. If you find winches are unsatisfactory or unsafe, you close the job down until they are repaired?

A. Well, not unless they are awful bad. Otherwise, we would be going home pretty early pretty often. [141]

Q. But you yourself in charge of the gang made no complaint either to Mr. Petri or to any of the ship's officers about the alleged condition of this winch?

A. I don't think I did that night. I don't remember of it, anyway.

Q. After this accident happened to Mr. Dillon, did Mr. Rigney continue to drive the winches?

A. I believe he did.

Q. And you had no more trouble with them, did you? A. Well, the same thing.

Q. That same condition persisted?

A. Sure.

Q. At any time that evening, did you call that to anybody's attention?

(Testimony of Claud Sellman.)

A. I think I told the gang.

Q. I mean to the foreman?

A. I don't know.

Q. Or to the ship's officers?

A. What is the question?

Q. Did you report that condition to Mr. Petri, the foreman, or any of the ship's officers?

A. Well, I don't know if I did or not. I suppose I did.

Q. Would you say you did or didn't?

A. I wouldn't say because I don't remember for sure. [142]

Q. What of the ship's personnel was aboard that night if you remember. A. I don't know.

Q. Is there a night Mate?

A. Commonly is a night Mate, yes.

Q. Was there an electrician aboard the ship?

A. I don't know.

Q. Whose duty would it have been, whether there was an electrician or Mate or not, to repair the defect in the winch? A. Whose duty?

Q. Yes. A. The electrician.

Q. Getting down to immediately before the accident to Mr. Dillon, you were foreward of the hatch, were you? A. Foreward of the hatch?

Q. Yes.

A. No. I was alongside the hatch.

Q. Mr. Rigney testified, if I understood him correctly, you were in the foreward end of the hatch facing him, is that right?

(Testimony of Claud Sellman.).

A. Not in this type of ship, I don't think.

Q. I beg your pardon?

A. I must have been on the side of the hatch, if I remember right. [143]

Q. You were close to him?

A. Where he could see my hand.

Q. And you could see down below into the lower hold? A. That's right.

Q. Pardon me, I meant into the tween deck. This strongback was then lowered down into the tween decks by Mr. Rigney on the signals that you gave him?

A. He lowered according to my signal, yes.

Q. When he lowered it down off the poopdeck down below to the tween decks, did he do so rapidly or slowly?

A. I don't know for sure it was on the poopdeck or not, might have picked it up from the other to the tween decks.

Q. From wherever it was, was it lowered down into the tween decks slowly or rapidly?

A. Well, we lowered them pretty slow.

Q. Do you remember how this was lowered?

A. We always lower them slow.

Q. So this was lowered slow, was it?

A. Certainly.

Q. He was watching you and you were giving the signals? A. That's right.

Q. How far down did you lower it before you gave him a signal to stop? [144]

(Testimony of Claud Sellman.)

A. I don't know where we pick it up from, that's what I say.

Q. How far above the deck of the tween decks was the strongback lowered before you gave the signal to stop?

A. I said I don't know where we picked it up from for sure.

Q. Apparently I don't make myself clear. I am trying to find out how far above the deck of the tween decks—let's say how far above the slot of the hatch coaming was the beam when you ordered it to be stopped?

A. I don't know. The first time, it was probably pretty high.

Q. Well, how high?

A. I wouldn't say for sure.

Q. Give us an idea.

A. I only remember clearly this far, when I stopped and let the man get hold of it. Whether I stopped before or only once, I don't remember that.

Q. But anyway, you stopped so the men could get hold of the beam. A. It was pretty high, yes.

Q. How far above the slot was the strongback at that time?

A. Well, at the time I stopped, when they got hold of it, as I say it was two feet or two and a half feet. [145]

Q. Was the strongback swinging?

A. Not much. They always swing some, of course.

Q. What was Mr. Dillon doing, or did you see

(Testimony of Claud Sellman.)

Mr. Dillon doing anything at that time just before his accident?

A. He grabbed hold of one end of the strongback to pull it into position over the slot.

Q. In other words, he grabbed hold of the strongback itself, did he?

A. I don't know whether it had a rope on it, a lanyard, a chain, whether he grabbed hold of the strongback, but I see him grab hold of it to steady it.

Q. When you saw him have hold of it, what side of the hatch was he on?

A. He was on the offshore side, that would be the port side.

Q. He was the only one handling his end?

A. I think so.

Q. What did you observe him do with reference to placing his hands in any position?

A. I don't know. He had hold of it to steady it.

Q. How did he have hold of the strongback while he was steadyng it?

A. I don't know particularly.

Q. Didn't you see him grab the flange with his hand? A. I may have. [146]

Q. You did? A. I may have.

Q. You don't remember?

A. Not particularly, no.

Q. Do you remember that as a matter of fact that strongback got fouled in that port slot and that is the reason it got hung up?

A. Got fouled in the port slot?

Q. Yes. A. How could it?

(Testimony of Claud Sellman.)

Q. I say, do you rememebr or isn't that what occurred? A. Why, no.

Q. Isn't it true that Mr. Dillon and some of the other members were taking the hatch covers and trying to knock the port end of the strongback out of the slot so they could get it in a normal position? A. Absolutely not.

Q. After you saw Mr. Dillon have hold of the strongback, what orders did you give Mr. Rigney, the winch driver?

A. Just give him a signal like that (indicating).

Q. And that signal meant what?

A. Come back.

Q. By come back, you mean lower?

A. That's right.

Q. He executed that order, didn't he ([147])

A. I suppose he did.

Q. Do you know what notch he was on?

A. No, I don't know what notch he was on.

Q. When Mr. Rigney lowered the strongback pursuant to your orders, that is when this accident happened? A. That's right.

Mr. Franklin: That's all, thank you.

Redirect Examination

By Mr. Zabel:

Q. When he lowered it at that point, did it ease down or how did it go down? A. It dropped.

Q. Was that a normal way?

A. No. That is what I asked Paul, I says, "What happened?" It must have slipped, because

(Testimony of Claud Sellman.)

I know he can't come back that fast.

Mr. Zabel: That's all.

Recross-Examination

By Mr. Franklin:

Q. After Mr. Dillon's accident, how much longer did you use those winches?

A. I don't know, 'til they knocked us off that night.

Q. No further repairs were attempted to be made by [148] anybody?

A. Not that I know of. I think there was a guy around there, but I don't think he done anything.

Q. You yourself didn't see anybody from the ship's personnel attempting to repair those winches?

A. I wouldn't say for sure.

Q. You were around there, weren't you?

A. Yes, but I am looking into the hatch. The winches were over there.

Q. It would be a matter of fact, if these winches were defective, whether some member of the ship's personnel was there to repair it, wouldn't it?

Mr. Zabel: That is objected to as argumentative.

The Court: The objection is overruled.

The Witness: I don't know. They only slipped about two feet.

Q. The order you gave was to drop this beam in position? A. That's right.

Mr. Franklin: That is all, thank you.

(Testimony of Claud Sellman.)

Mr. Zabel: At that time, the beam was how high above the slot?

The Witness: Well, from my position I would say about two feet, might have been a little higher, might have been two and a half feet. [149]

The Court: This witness is excused.

(Witness excused.)

The Court: These proceedings are continued until tomorrow morning at 9:30.

(At 5:10 o'clock, p. m., Thursday, June 23, 1949, proceedings recessed until 9:30 o'clock, a. m., Friday, June 24, 1949.)

Seattle, Washington, June 24, 1949
9:55 o'clock, a. m.

Mr. Franklin: May I at this time impose upon the Court and counsel for libelant to present out of order the testimony of Captain Ness, who is required to take a ship down to Grays Harbor this afternoon. His testimony will be very brief.

The Court: You may do that. [150]

LOUIS NESS

called as a witness by and on behalf of respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Franklin:

Q: State your name, please?

(Testimony of Louis Ness.)

A. Louis Ness.

Q. How old are you? A. Sixty.

Q. What is your occupation or calling?

A. Master mariner.

Q. How long have you held a license as Master mariner? A. Since 1921.

Q. Any ocean, any tonnage?

A. That's right.

Q. On May 13, 1946, what was the nature of your employment?

A. I was night Mate on the Goucher Victory.

Q. By night Mate, what do you mean as to hours of employment?

A. I worked from 5:00 o'clock in the evening to 8:00 in the morning.

Q. You relieved the regular mate? [151]

A. Yes, sir.

Q. What are your duties as night Mate?

A. To look after the loading and unloading of the ship and see that everything is in working order.

Q. Where was the Goucher Victory docked on May 13, 1946? A. Pier 36, I think it was.

Q. That is the Port of Embarkation?

A. Yes, sir.

Q. Was any stevedoring work being carried on that evening?

A. They were loading stores, that's all I know.

Q. In what hatch? A. No. 1 hatch.

Q. Do you remember about how long they were engaged in loading stores?

(Testimony of Louis Ness.)

A. Well, they worked practically all night.

Q. Who loaded the stores, seamen or stevedores?

A. Stevedores.

Q. You were the only ship's officer available and on duty during the evening of May 13, 1946?

A. I was the only one aboard.

Q. Was there always a second electrician aboard?

A. Yes, they always had electricians to look after the operating of the winches. [152]

Q. What kind of winches were aboard the Goucher Victory? A. Electric winches.

Q. How many times would you make your rounds and visit in the vicinity of No. 1 hatch?

A. Well, I walked around the decks all the time during the night, when any work is done there on the ship.

Q. At any time was any complaint made to you as night Mate of the vessel that there was any defective condition existing in No. 1 winches?

A. No, sir.

Q. Did you have occasion from time to time to observe the operation of No. 1 wnches?

A. Yes.

Q. How did they operate?

A. As far as I could see, they were operating all right.

Q. If there were any defect or complaint about the condition of those winches, what is the usual custom and practice as to who would be notified?

A. The electricians, on electric winches.

(Testimony of Louis Ness.)

Q. Who would notify the electricians?

A. I would, and longshoremen would notify me, and then I would notify the electrician.

Q. What is your testimony as to [153] whether any complaint whatever was made as to the condition of the winches to your knowledge?

A. No, sir, not that I know of.

Q. Did you hear of an injury occurring to Mr. Dillon, a stevedore? A. Yes.

Q. Did you make a log entry of that injury?

A. Yes, sir.

Q. Do you know who gave you the information as to the occurrence of Mr. Dillon's injury?

A. The foreman, I suppose, the stevedore foreman.

Q. At the time you received that information, what, if anything, was said as to whether the accident was caused by any defect in No. 1 winches?

A. No, I don't think there was any.

Mr. Franklin: That is all, thank you.

Cross-Examination

By Mr. Zabel:

Q. You didn't see the accident, did you?

A. No, sir.

Q. You don't know of your own knowledge how it happened? A. No, I don't.

Mr. Zabel: That is all. [154]

(Testimony of Louis Ness.)

Redirect Examination

By Mr. Franklin:

Q. After Mr. Dillon's injury, were the electric winches of No. 1 hatch operating satisfactorily?

A. Yes.

Mr. Franklin: That is all, thank you. With the Court's permission, may the witness be excused?

Mr. Zabel: Yes.

The Court: You may be excused permanently from further attending this trial.

(Witness excused.)

Mr. Zabel: The plaintiff rests, Your Honor.

The Court: The defendant may now proceed.

Mr. Franklin: In the interest of conserving the time, respondent will waive its opening statement. Respondents desire to call Mr. Packard.

MARTIN PACKARD

called as a witness by and on behalf of respondent, having been first duly sworn, was examined and testified as follows: [155]

Direct Examination

By Mr. Franklin:

Q. What is your name?

A. Martin O. Packard.

Q. Would you spell your last name?

A. P-a-c-k-a-r-d.

Q. Where do you live?

(Testimony of Martin Packard.)

A. 3037 - 35th West.

Q. What business are you presently engaged in?

A. Independent adjusting business.

Q. In September of 1946, by whom were you employed? A. John H. Davis Company.

Q. What connection, if any, did the John H. Davis Company have with Mr. Alfred L. Dillon, the libelant in this case?

A. John H. Davis Company was the independent contractor handling all adjustments for Employer's Mutual of Wisconsin, and in that capacity he was handling the adjustment of the Longshore Compensation claim for Mr. Dillon.

Q. Mr. Dillon's employer was who?

A. Mr. Dillon's employer was Rothschild International.

Q. Who were the Longshore Compensation carriers for Rothschild?

A. Employer's Mutual of Wausau, Wisconsin.

Q. Do you know the libelant in this case, Mr. Alfred Dillon? A. Yes, sir.

Q. How did you come to make his acquaintance?

A. I was appointed as adjustor by John H. Davis Company to handle the claim of Mr. Dillon.

Q. Was he paid compensation by your company?

A. Yes, sir.

Q. Directing your attention specifically to September 17, 1946, I will ask you if you saw Mr. Dillon on that day? A. Yes, I did, sir.

Q. Where did you see Mr. Dillon?

(Testimony of Martin Packard.)

A. 324 Vance Building.

Q. Whose offices were those?

A. John H. Davis Company office.

Q. Who was present at this time? Was anybody present besides yourself and Mr. Dillon at that time? A. John H. Davis.

Q. Where is John H. Davis now?

A. He is presently in San Francisco.

Q. What was done or what was the purpose of that meeting?

A. The purpose of that meeting was to establish —to take a statement establishing the present condition of Mr. Dillon's disability and also establish whether there [157] was any third party liability existing.

Q. In this case, what do you mean by third party liability, against whom?

A. Whether there was any negligence or liability against the ship.

Q. Upon which Mr. Dillon was injured?

A. Upon which Mr. Dillon was employed at the time of the accident.

Q. How long did your discussion of the matter with Mr. Dillon last?

A. We discussed it for a period of approximately one-half to three-quarters of an hour, and during that time we took a statement.

Q. During that time, during that discussion you had with Mr. Dillon, was Mr. Dillon asked whether any of the ship's defective equipment was respon-

(Testimony of Martin Packard.)

sible for his injury? A. Yes, he was.

Q. What was his answer to that?

A. He stated there was no defective equipment on the ship.

Q. Do you remember what ship it was?

A. SS Grouch.

Q. The Goucher Victory, wasn't it?

A. The Victory.

Q. Who wrote the statement that was prepared after [158] your discussion with Mr. Dillon?

A. John H. Davis.

Q. Was Mr. Dillon able to write it?

A. He signed the statement, I think he signed it by printing with his left hand.

Q. Why couldn't he use his right hand?

A. He alleged he was totally disabled in that hand.

Q. Handing you Respondent's Exhibit A-1, I will ask you if you can identify that statement?

A. Yes, sir. This is the pad, and the writing of John H. Davis and the printed name of Alfred Dillon as printed by Mr. Dillon.

Q. Did you see him print it? A. Yes.

Q. Did Mr. Dillon read that statement before he printed his name? A. Yes, sir.

Q. Did he offer any corrections?

A. No, sir.

Mr. Franklin: That is all, thank you.

The Court: Respondent's Exhibit A-1 has not been admitted yet.

(Testimony of Martin Packard.)

Mr. Franklin: I move at this time, if the Court please, that Respondent's Exhibit A-1 be admitted in evidence. [159]

Mr. Zabel: I object to it, Your Honor, for the reason, first, that there is no proof that he knows the handwriting of the man who wrote that statement that is written on that paper. There is no proof he knows the handwriting.

Mr. Franklin: I will clear that up.

The Court: Let him see the exhibit and ask him with reference to the specific thing before him. I want the witness' attention to be called to the writing on the exhibit, not only that in the body of the exhibit, but also the alleged signature of the person signing it.

Q. Directing your attention to Respondent's Exhibit A-1 for identification, can you identify the signature or the handwriting of the person who wrote all portions of that statement except the signature?

A. Yes, sir.

Q. Whose handwriting is it?

A. John H. Davis.

Q. Did you see him write it?

A. Yes, sir.

Q. And you can identify it?

A. Yes, sir.

Q. Directing your attention to the name signed at the bottom of Respondent's Exhibit A-1, can you identify [160] that signature as to who wrote it?

A. I can identify it by saying that the man—I saw the man write and print the signature with his left hand.

(Testimony of Martin Packard.)

Q. On Respondent's Exhibit A-1?

A. Yes, sir.

Mr. Franklin: Respondents renew their offer.

The Court: Ask him in that connection who did write it and whose signature is it?

Q. Who did print the name you have described at the bottom of that exhibit?

A. Mr. Alfred Dillon.

Q. Whose signature is on that document?

A. Mr. Alfred Dillon.

Q. That is Mr. Dillon, the gentleman sitting in the courtroom? A. Yes, sir.

Mr. Zabel: May I see the exhibit?

The Court: You may see it and you may inquire further on the voir dire examination as to this exhibit.

Voir Dire Examination

By Mr. Zabel:

Q. What time of the day was this?

A. I do not recall, during daylight hours and during [161] office hours.

Q. Is your work office work? A. Both.

Q. You are out of the office quite a bit?

A. I am out of the office and in the office.

Q. At that time, were you employed to investigate?

A. I was operating as the office manager, working outside of the office and in the office for John H. Davis Company.

(Testimony of Martin Packard.)

Q. John H. Davis Company is nothing more than John H. Davis? That is just himself, isn't it?

A. Well, it is a company.

Q. It isn't a corporation?

A. No, it isn't a corporation.

Q. Just an individual? A. Yes, sir.

Q. Just John H. Davis, and he calls himself John H. Davis Company, isn't that it?

A. Yes, sir.

Q. So you and John H. Davis were the ones working in the office? A. Yes, sir.

Q. What was his status in the office?

A. John H. Davis Company at that time was still there.

Q. No, I mean John H. Davis. [162]

A. John H. Davis was the owner of the business and also worked as an adjustor.

Q. And you worked as an adjustor?

A. Yes, sir.

Q. He was the owner and you were the manager?

A. I was acting as manager, past tense, sir.

Q. What time of the day was this, do you know?

A. No, sir.

Q. In this statement, you said there was no defective equipment. That was a general statement made?

A. It was a question asked Mr. Dillon and he answered by stating that there was no defective equipment.

(Testimony of Martin Packard.)

Q. Is that as far as you went in your inquiry?

A. We are always concerned with whether there is any third party liability.

Q. Did you ask about any details?

A. We did, during the conversation, but we didn't put all items down in the statement.

Q. You did not put all items down in the statement?

A. We put down all concerning his mention of the defective equipment of the ship.

Q. But your full conversation isn't in this statement, is it?

A. Yes, sir. The full conversation, the draft of the full conversation is in the statement. [163]

Q. The draft of it? A. Yes, sir.

Q. What do you mean by draft?

A. As I explained, we discussed this accident prior to the time we took the statement concerning the defective equipment of the ship, or the condition of the ship, but concerning the condition of his hands and so forth.

Q. He was getting compensation, wasn't he?

A. I believe he was, yes, sir.

Q. Was this written down piecemeal or was it written all at once?

A. It was taken down piecemeal.

The Court: How did you proceed? Did you talk with him about each piecemeal writing or statement, or did you just talk with him about the whole situation and then write it all down and ask him to

(Testimony of Martin Packard.)

sign it without explaining it to him? How did you proceed with reference to keeping him advised as to the details?

The Witness: We asked him specific statements, and as he made these specific statements, we wrote them down.

The Court: Do you know whether they were written down accurately as he in substance, at least, stated the answer?

The Witness: Yes, sir, they were written accurately. [164]

The Court: Is the statement now an accurate statement of what he said, at least the substance of what he said?

The Witness: Yes, sir.

Q. After you had written this, then Mr. Davis presented it to him for his signature, is that right?

A. Yes, sir, and asked him first to read over the statement.

Q. Asked him to sign it?

A. Asked him to read over the statement and then if it was correct, to sign it.

Q. There was no detailed discussion about this accident particularly, was there? All you say here, "There was no defective equipment." There was no detailed discussion?

A. There was a discussion, we merely asked how the accident occurred and this discussion took place prior to the time that the statement was taken.

(Testimony of Martin Packard.)

Q. Can you recall briefly what he said at that time as to how his accident happened?

A. Briefly, he stated he was working on the SS Goucher Victory and that while working with some timbers a timber slipped and fell on his third and fourth fingers of his hand, crushing them.

Q. The timber slipped and fell on his hand?

A. Yes, sir.

Q. And crushed his hand?

A. Crushed his fingers, sir.

Q. That is about as far as you went with reference to how he got his hand hurt, isn't that right?

A. Yes, sir, in the statement.

Q. In other words, that is your best recollection that this strongback— A. He said timber.

Q. —dropped and crushed his hand, is that right?

A. While working with the timber, it slipped.

Mr. Zabel: I want to renew my objection to this statement. He states that the timber dropped and crushed his hand. That was his recollection of the conversation, and we have a different statement, Your Honor, stating that his hand got caught or something to that effect, nothing about dropping of the timber. It is at variance with what he recalled.

The Court: Do you wish to give the Court the benefit of any authority that supports your contention, where the written statement offered is at variance with the witness' recollection of the subject

(Testimony of Martin Packard.)

of it, that that excludes or supports exclusion from evidence of the writing?

Mr. Zabel: I have no cases to present, Your Honor. [166] But he has stated that everything was written down just as it was stated. He has so stated, and now in his recollection he states something different than what appears in the statement.

The Court: Do you wish to make any response to the objection?

Mr. Franklin: No, if the Court please. The witness has identified the statement as having been an accurate summary of the conversation carried on between Mr. Dillon and himself relative, among other things, as to how the injury occurred, for possible purpose of third party liability.

He has stated that it was written down carefully, that the proposed exhibit accurately reflects what was written down, that those statements are true, that they were read over by Mr. Dillon, signed by Mr. Dillon, he has identified the signature, and that there were no changes requested by Mr. Dillon. I think counsel's argument merely goes to the weight of the evidence rather than to its admissibility.

The Court: The objection is overruled. Respondent's Exhibit A-1 is now admitted.

(Respondent's Exhibit A-1 received in evidence.) [167]

(Testimony of Martin Packard.)

RESPONDENT'S EXHIBIT A-1

9/17/46, Seattle, Wash.

My name is Alfred Dillon of 214 17th No. in Seattle. Birth date 6/8/89. I've been longshoring 33 years. I'm presently single, but have 2 children, Agnes Eliz. Anderson and Wm. L. Dillon, both of New York. Both are married and neither is a dependent. Thus I have no dependents.

My injury occurred May 13, 1946 aboard the SS Grouch Victory. I was placing a beam in the keeper and reached out to rehook the beam. The beam dropped into place but my right hand was in the way. I crushed three fingers.

I'm presently under medical treatment by Dr. Smith and receive treatments for physiotherapy from Elsie Childs. I'm still unable to work for the healing process is slow.

There was no defective equipment. I was not injured except as to my right hand.

The above is true and correct in its entirety.

/s/ ALFRED DILLON.

Admitted June 24, 1949.

The Court: I believe counsel for respondent had indicated already that his direct examination of the witness was concluded. I ask counsel for libelant if he wishes to proceed with cross-examination of the witness?

(Testimony of Martin Packard.)

Mr. Zabel: I have completed my cross-examination in the interrogation, Your Honor.

Mr. Franklin: We have nothing further. May Mr. Packard be excused?

The Court: Is there any objection on the part of the libelant?

Mr. Zabel: No objection, Your Honor.

The Court: You may be permanently excused from further attending this trial as a witness.

(Witness excused.)

Mr. Franklin: If the Court please, bearing in mind the time element, the respondent desires to introduce in evidence the deposition of Frank Palmer which was taken pursuant to notice on written direct interrogatories. The original is in the files of the Court.

I might state to the Court that this deposition of Mr. Frank Palmer was taken at Sunnyside, Washington, pursuant to written notice and serving of direct interrogatories upon the parties and no cross-interrogatories were served.

DEPOSITION OF FRANK PALMER

“Interrogatory No. 1: State (a) your name, (b) age, (c) present residence, and (d) present occupation.

Answer: (a) Frank Palmer, Jr., (b) 35 years of age, (c) Sunnyside, Washington, and (d) insulation salesman.

Interrogatory No. 2: Were you ever a member

(Deposition of Frank Palmer.)

of the crew of the SS 'Goucher Victory' during the year 1946? A. Yes.

Interrogatory No. 3: If so, state the approximate date of service aboard the vessel.

A. From the early part of February, 1946, to about June 1st, 1946.

Interrogatory No. 4: Please state the approximate age of the SS 'Goucher Victory' when you served aboard her.

A. I do not think the ship was over one year old.

Interrogatory No. 5: State if you ever served as Assistant Electrician on the SS 'Goucher Victory.' A. Yes.

Interrogatory No. 6: If so, state for what period of time.

A. From some time in the month of April, 1946, until the time I ended my employment about June 1st, 1946. [169]

Interrogatory No. 7: What was the name of the Chief Electrician? A. Jim Steele.

Interrogatory No. 8: What duty did the Chief Electrician and yourself have in connection with the maintenance and repair of the winches?

A. We were supposed to keep them in working condition at all times.

Interrogatory No. 9: State what type of winches were installed aboard the 'Goucher Victory.'

A. Electric winches.

Interrogatory No. 10: Referring to the evening of Monday, May 13, 1946, state (a) where the vessel

(Deposition of Frank Palmer.)

was moored, and (b) whether the vessel had a voyage in contemplation to a foreign country, and if so, to what country?

A. (a) At Seattle, Washington, and (b) we just came in from Yokohama, Japan, and the vessel was supposed to be going back to Yokohama, Japan.

Interrogatory No. 11: State what work was being carried on upon the vessel on Monday evening, May 13, 1946, and by whom.

A. Unloading cargo by stevedores.

Interrogatory No. 12: Where was Mr. Steele that evening?

A. He was off of the ship and I do not know where he was at.

Interrogatory No. 13: Where were you?

A. On board ship.

Interrogatory No. 14: How long did you remain aboard the vessel that evening of May 13th, 1946?

A. I was there all night.

Interrogatory No. 15: State if at any time you were aboard the vessel that evening, an accident was reported to you as occurring to a stevedore at No. 1 winch, which is supposed to have happened at approximately 9:30 p.m. A. No.

Interrogatory No. 16: State if that evening you were called upon to make any repairs to No. 1 winch? A. No.

Interrogatory No. 17: If so, state what they were. A. None.

Interrogatory No. 18: State if any complaints were made to you by any of the stevedores relative

(Deposition of Frank Palmer.)

to the functioning of No. 1 winches on the evening of May 13, 1946? A. No.

Interrogatory No. 19: State approximately when the vessel left Seattle and for what port.

A. We left after the vessel was loaded, probably about a week later for Yokohoma, Japan. [171]

Interrogatory No. 20: State if after the vessel left Seattle and until you got off the vessel on its return to Seattle, you made any repairs to No. 1 winch at any time after May 13, 1946.

A. Oh, we always greased them and saw that they were in working order. We had no special repairs to No. 1 winch.

Interrogatory No. 21: What use of No. 1 winches were made on the voyage to Yokohoma and return?

A. It was used over there to unload cargo. No. 1 winches were used on this voyage same as other winches.

Interrogatory No. 22: Did you observe No. 1 winch in operation on the voyage from Seattle to Yokohama and return? A. Yes.

Interrogatory No. 23: If so, state from your observation how No. 1 winches operated during this period.

A. Oh, it was used to raise and lower gear and unloading cargo same as other winches on vessel."

Mr. Franklin: Respondents offer in evidence the deposition by interrogatories of Frank Palmer.

The Court: That deposition is received as part of respondent's case in chief.

Mr. Franklin: Respondents desire to introduce in [172] evidence deposition of James A. Steele.

The Court: The deposition of James A. Steele may now be read.

Mr. Franklin: This deposition, may it please the Court, was taken at San Francisco, California, August 20, 1948. At that time, Mr. Poth represented Mr. Dillon. There was no representation on behalf of Rothschild International Stevedoring Company. Mr. Ransom represented the respondents.

DEPOSITION OF JAMES A. STEELE

“Examination by Mr. Ransom:

Q. Will you give your full name for the record?

A. James A. Steele.

Q. And what is your present address, Mr. Steele?

A. 1810 Addison Street, Berkeley, 3, California.

Q. Where are you employed?

A. Colgate Palmolive Peet Company, Berkeley.

Q. What is the nature of your employment there? A. I am maintenance electrician.

Q. What if any sea experience have you had?

A. I have had three voyages as chief electrician on the Goucher Victory, and previously, from 1933 to 1937 for the Dollar Lines.

Q. Well when did you join the Goucher Victory, do you recall? [173]

A. December 24, 1945.

Q. How many voyages did you sail on her?

A. Three.

(Deposition of James A. Steele.)

Q. And do you recall about when you were discharged from the Goucher Victory?

A. About July, 1946.

Q. And in what capacity did you sail?

A. Chief electrician.

Q. On the Goucher Victory, Chief Electrician?

A. Yes, Chief Electrician.

Q. What experience have you had in electrical work?

A. Well, prior to that time, I held a journeyman's electrician card since 1942. Prior to that time, having worked for the Panama Canal and various local contractors, and the United States Navy. I think about two years as a Marine electrician, leaderman in shipyards, Kaiser shipyards.

Q. In Richmond? A. In Richmond.

Q. As the chief electrician on the Goucher Victory, what were your duties?

A. To maintain all the electrical equipment in good condition, perform any repairs that are necessary, and generally observing the condition of it, ordering the stores, the electrical stores, directing the activities of the second electrician. [174]

Q. Were you aboard the vessel in that capacity for each of the three voyages referred to?

A. For all of them, yes.

Q. What type of winches are there—strike that. What type of ship was the Goucher Victory?

A. Well, it was a Victory, converted to a troop transport.

(Deposition of James A. Steele.)

Q. And do you have any idea what her age was at the time you were aboard her?

A. Well, it was reported to me that it had been in operation about six months. It had made either, I think, two or three previous voyages across the Atlantic.

Q. You only know that from scuttlebut, do you?

A. That's right.

Q. What type of winches were aboard the Goucher Victory?

A. They were General Electric unit winches.

Q. No steam winches?

A. No steam winches.

Q. And did you have any duties with respect to the winches?

A. It was my job to take care of them entirely; that is to say, to maintain them and to perform any repairs or adjustments that were necessary.

Q. And did you have any assistance in that work or [175] were you alone?

A. I had an assistant electrician, yes, a second electrician.

Q. What was his name, do you recall?

A. Well, I had three of them, and the last one, let's see, I think it was Calmer. The one previous was Stanley—I forget the names of the other two.

Q. What examinations did you make of the winches as part of your duties?

A. I closely observed them in operation, although I did examine the electrical gear while the

(Deposition of James A. Steele.)

ship was at sea. But there was no other way to observe the mechanical operation except to watch them while the deck crew or the stevedores were using them, since they have to be operated with a load on the winch, to be operated normally.

Q. And during the time that you were aboard for your three voyages, what if any defects did you observe in the winches used in connection with the number one hatch?

A. I never observed any defect at number one.

Q. Are you quite sure of that?

A. Yes, none at all at number two.

Q. As a troop ship, were the winches used more or were they used less than the ship operating as a cargo ship?

A. A great deal less.

Q. If any defects or trouble were noted in the use [176] of the winches, to whom would such occurrence be reported?

A. It should in all cases eventually be reported to me, as chief electrician.

Q. By "eventually," what do you mean?

A. Well, it could be reported by whoever observed it to his immediate superior, who in turn might have reported it to my superior; in any event the report should reach me.

Q. While you were aboard the Goucher Victory, did anyone at any time ever report any defect in or trouble with the winches located at number one hatch? A. No.

(Deposition of James A. Steele.)

Q. I am referring to any of the winches used in connection with any loading or discharging operation relative to number one hatch. Do you understand that?

A. Yes. No defect whatever was reported about number one hatch.

Q. Were you aboard the vessel on May 13th, at the time the vessel was at the port of embarkation at Seattle? A. Yes.

Q. Had the vessel been in that shipyard some time prior to that time, do you recall?

A. Yes, it had been to the shipyard for several weeks. I forget what work was being done.

Q. Was any work at that time being done on the winches, that you know of? [177]

A. No, not on the winches.

Q. And do you know whether the winches were operated during that time?

A. I couldn't say for certain. Probably they were, but I couldn't say for certain."

The Court: We will have to take a recess during the noon hour. Court will be in recess until 2:00 o'clock.

(At 12:00 o'clock p.m. Friday, June 24, proceedings recessed until 2:00 o'clock p.m., Friday, June 24, 1949.)

June 24, 1949, 2:00 o'Clock P.M.

The Court: You may proceed with the case on trial.

(Deposition of James A. Steele.)

Mr. DuPuis: Mr. Franklin asked if I would initiate the examination of Dr. Buckner.

The Court: You may do that. [178]

* * *

"Q. Did you receive any reports of trouble with the winches during that time?

A. No. [191]

Q. Where did the ship go after leaving the ship-yard?

A. It moved over to the port of embarkation in Seattle.

Q. What occurred there?

A. Well, they loaded ship stores for, oh, probably two or three days, and then took the troops aboard and left out for Yokohama.

Q. Were you aboard during the loading of the troop stores? A. Yes.

Q. Were any stores loaded to number one hatch, number one hold?

A. Yes, practically all of them were unloaded at number one.

Q. Did you observe at any time in connection with that loading of stores?

A. Yes, I have watched them.

Q. What did you observe?

A. That everything was working good.

Q. Did you observe any defects in the braking of the winches?

A. No, it stopped on the lowering. Stopped

(Deposition of James A. Steele.)

with the load on the hook while the hook was lowering.

Q. During the loading of these stores at Seattle in this period of time, did you receive any reports concerning any trouble with or any defects with respect to, the winches [192] at number one hatch?

A. Never had any reports to that effect.

Q. Did you have any reports of any trouble or defects in connection with the winches at the number one hatch after loading at Seattle?

A. No.

Q. Did you know an Alfred L. Dillon, who is the libelant in this case?

A. No, I did not.

Q. Did you ever see any accident to him?

A. No, I did not.

Q. Or to any man known by you as that name?

A. No, I never saw any accident while I was aboard.

Q. Never saw any at all? A. No.

Q. Did you receive a report of an accident to an Alfred L. Dillon?

A. Never received any report.

Q. And during this loading at Seattle, did you have occasion to observe the brake lining of the winches at number one hatch?

A. Well, they are in plain view at all times, so that I looked at them periodically; and there was no evidence of any wear.

(Deposition of James A. Steele.)

Q. In other words, from your observation, you didn't [193] observe any wear?

A. They seemed to be tight and didn't seem to be worn. Of course my purpose in observing them was to see if they needed tightening.

Q. And from your observation, you concluded that they did not need tightening, is that right?

A. That is right.

Q. And did you ever tighten them while you were aboard? A. Never tightened them.

Q. Did you ever receive any requests to tighten them? A. Never received any.

Q. What brakes did the winches have?

A. They had a large automatic brake, spring operated, electrically released. They had a foot treadle operating a brake, but I don't recall whether that was a separate brake or the same brake.

Q. Do you recall whether or not there was any defect in the automatic brake of the winches to number one hatch which would prevent you from tightening that?

A. No, they were in good condition.

Q. Prior to going into Seattle, when had the winches at the number one hatch last been operated, do you know?

A. Well, they were used during the voyage, but I don't remember exactly when. [194]

Q. That is, they had been used after leaving port?

(Deposition of James A. Steele.)

A. Yes, and they had been used in Yokohama to load additional stores.

Q. So far as you know, were they operating properly in those uses? A. Yes.

Q. Following leaving Seattle—strike that. How long after loading at the port of embarkation, do you recall, was it before you sailed?

A. Well, it was probably two days at the longest. In other words, at the termination of loading of ships' stores, we loaded the troops and probably that would take one day, and then we sailed.

Q. Where did the vessel go then?

A. To Yokohama.

Q. And were the winches at the number one hatch used at Yokohama?

A. Yes, they were used there.

Q. Did you observe their use there?

A. Yes.

Q. Did you observe any defects in their use or operation?

A. Well, they seemed to be working all right.

Q. Did you have any reports of any trouble with the winches at Yokohama? [195]

A. No.

Mr. Ransom: That is all.

Examination

By Mr. Poth:

Q. How many hatches were there on the Goucher Victory? A. Five.

(Deposition of James A. Steele.)

Q. And how many of them were fitted out for carrying troops on the 13th day of May of 1946?

A: Parts of number one and all of number two.

Q. All of number two?

A. Yes. Part of number three and part of number four.

Q. What about five?

A. No, five was for mail.

Q. Five was for mail? A. Yes.

Q. Now number two, then, took no cargo at all?

A. No cargo at all.

Q. So the cargo hatches were numbers one, three and five?

A. Yes. Well, there was little or nothing handled through number three, just a few things might have been set in there; but actually no stores were in number three.

Q. And you say ships' stores were customarily loaded in number one? [196]

A. Number one.

Q. Were ships' stores placed in the other hatches also?

A. No, there was a little bit of departmental stores were set down in the main deck and carried into various storerooms, but the actual ships' stores in bulk quantity were loaded in number one.

Q. Was there any heavy cargo, heavy pieces of cargo, loaded on the ship on the 13th or about that time? A. No heavy pieces, no.

Q. Or thereafter?

(Deposition of James A. Steele.)

A. All sling loads.

Q. Do you know what the average weight of the load of ships' stores were that were being stowed down in number one hatch on the 13th?

A. Well, I asked the chief mate that question one time, and he said that it was about a ton and a half, up to three thousand pounds.

Q. Wouldn't 1500 be more like it?

A. Well, now, I would be in no position to say. Sling loads—they vary quite a bit, depending on the shape of the packages, and so I wouldn't really be in any position to hazard a guess.

Q. Do you know whether the booms on the number one hatch were tested and then marked for tonnage? [197]

A. They were tested. I don't remember whether they were marked. I didn't see the marks. They may have been, but I didn't see them.

Q. Well, do you know what they tested out at?

A. I know what they tested them at, $7\frac{1}{2}$ tons.

Q. $7\frac{1}{2}$ tons?

A. But I didn't see those particular booms. But I have worked in the shipyard on Victory ships, and they test the 5-ton booms at $7\frac{1}{2}$ tons.

Q. Now, what is supposed to be the safe limit for the brakes as in operation on number one hatch, as to tonnage?

A. It should stop when the hook is lowering at full speed, it should stop $7\frac{1}{2}$ tons.

Q. $7\frac{1}{2}$ tons? A. Yes.

(Deposition of James A. Steele.)

Q. Do you know what the weight of one of these strong banks was in the 'tween decks of the number one hatch of the Goucher Victory?

A. I don't actually know the weight of those. I would put a guess at something a little under 1000 pounds. But I wouldn't be sure.

Q. You don't know?

A. I don't know, actually.

Q. How many winches were there on number one hatch of the Goucher Victory on the 13th day of May, 1946? [198] A. Two, I think.

Q. Two?

A. (Witness nodded in the affirmative.)

Q. Where were they situated?

A. Just forward of number one mast house. That would be the aft end of the hatch.

Q. Were these winches operated by one winch driver or by two winch drivers?

A. Well, normally they are operated by one, but they can be operated by two.

Q. These are with levers attached so that one man could operate both of the winches?

A. The two controls were stationed at the center of the hatch coaming, so that they could be operated by one winch driver.

Q. Now, what type of winches did you say these were?

A. General Electric unit winches.

Q. And what turned the winch drum around?

(Deposition of James A. Steele.)

A. It turned by 30 horsepower electric, direct current electric motor.

Q. Now, was that motor on the outside or the inside of the winch drum in relation to the ship's rail?

A. Well, the winches were positioned angularly, and I would state from my recollection of it, it was toward the outside, forward and outside. [199]

Q. In other words, it was on the outboard side of the drum, not on the inboard side of the winch drum?

A. I don't remember whether it was or not.

Q. Were these motors covered?

A. Oh, yes, they were waterproof motors.

Q. What kind of covering was over the motors?

A. Cast iron housing, with gaskets.

Q. Was this covering square or circular in shape?

A. Well, it was, I would say, hexagonal more—of course it was an irregular shape in order to cover the motor.

Q. Did you ever take one of the motors down on either of the winches on number one hatch while you were aboard the vessel?

A. I have taken the housing off; you have to take it off in order to service the brushes of the commutator.

Q. When was it that you did that?

A. That was at sea, returning from Yokohama.

Q. What was the occasion for doing that?

(Deposition of James A. Steele.)

A. Regular service procedure. We service all of them in order to look at the brushes and the length of the brushes and the condition of the commutator; the housing must be removed.

Q. Did you do that just as a matter of course every so often whether they needed it or not? [200]

A. Whether they need it or not, yes, sir. In other words, in order to detect any difficulties before they arose.

Q. Would you please describe the mechanism known as the automatic brake? As was present on the winches on number one hatch on the Goucher Victory?

A. Well, it was an external contracting brake, consisting of two bands,—they might be referred to as shoes—there was a one-inch pin in the bottom and the tops were drawn together by a large spring and the central portion had a shaft that connected to a solenoid. The spring operated the brake and the solenoid released it, so the brake was held on by spring pressure when the power was disconnected.

Q. Now, you mentioned on each winch, then, there were two brake bands, is that correct?

A. Two brake bands, yes.

Q. And in relation to the drum of the winch, there were these brake bands affixed?

A. They were affixed at the bottom, and the solenoid at the top.

Q. What is the solenoid?

(Deposition of James A. Steele.)

A. It is the electric coil that drives the brakes to an off position, an open position, opens them, releases them. [201]

Q. Was there any mechanism for adjusting these brakes? A. Yes.

Q. Where was that mechanism situated?

A. Well, it was situated at each point, and there was one on top and some adjustment could be made through the linkage to the solenoid.

Q. Well, now what did these brake drums rub on to?

A. The band rubbed a drum, a large drum.

Q. Were there two drums?

A. No, just one.

Q. There were two brake bands, one alongside the other, is that it?

A. No, they contracted in this way on one drum (indicating).

Q. Oh, on one drum, but you had one circling around, is that right?

A. Yes, one drum. The two bands mostly consisted of two linings contracting on one drum, one on each side, fastened at the bottom.

Q. Now, where was this drum in relation to the portion of the winch drum that the cables coiled on and up, was it inboard or outboard?

A. On that winch, the winches on number one, I don't recall whether it was inboard or outboard. The winch set at an angle. Now, let's see, what would that be considered? [202]

(Deposition of James A. Steele.)

I would say it was outboard.

Q. Outboard?

A. I forget now just exactly how they sat. It seems to me, my recollection of it is, that the brake drums were on the outboard side.

Q. Now, was there a covering or a case placed over the brake mechanism? A. No.

Q. It was out in the open?

A. Right out in the open, yes.

Q. What type of mechanism was placed there for adjusting the brake, was it a screw or bolt or not?

A. Yes, nuts and jam or screw threads.

Q. And you say there were two of those nuts, one on top and one on the bottom?

A. Yes, on the main linkage there were two on one staff.

Q. What do you mean by main linkage?

A. That is the linkage at the top where the principal portion of the operation takes place.

Q. Well, would you please describe what the main linkage is? What does it look like?

A. Well, it consists of a pin—now, let me think. There are several pieces to it. I couldn't describe it in detail to you. There are too many pieces involved. [203]

Q. Well, do the best you can, then.

A. However, it operates on the top or open side of the band to draw the two bands together, and it is a pulling action exerted by the spring. The

(Deposition of James A. Steele.)

spring setting against the ear on one hand and pulling the ear of the other band up to it.

Q. What were these brake bands made out of, if you know? A. Steel.

Q. Steel? A. Oh, the bands?

Q. Yes, the bands. A. The lining?

Q. The lining. A. You mean the lining?

Q. Yes.

A. The bands were steel, the linings were hydraulic material, brake lining material.

Q. Was it the same—

A. Standard brake lining material.

Q. Was it the same kind that is used in automobiles and trucks?

A. That kind of brake lining material, yes, sir.

Q. Did you have occasion ever to replace any brake lining aboard that vessel? [204]

A. No, sir, I never had to replace any on that.

Q. Did you have any in stock?

A. Yes, we had a spare brake, as a matter of fact.

Q. Did you ever test the braking power of the brakes on the number one hatch at the time?

A. No, I wasn't in a position to be able to do that, because as I said before, in order to test it, you have to have a load on the hook, and I was in no position as chief electrician to do that.

Q. Well now assume that the brake bands are set up to stop the lift on $7\frac{1}{2}$ tons, and assume that you are picking up a load of 8 tons, and you stop the load. What will happen? Will it slip?

(Deposition of James A. Steele.)

A. Well, 8 tons?

Q. Well, let's say 9 tons or 10 tons.

A. You mean, if you put enough load on to make it slip, would it slip?

Q. Yes.

A. Yes, if you put enough load on to make it slip, it would slip. In other words, its holding point isn't infinite, it takes a certain load, but then there is a saturation point beyond which it wouldn't hold. There is of course a great danger that the lines would part before the brake slipped. However, a person could try and see which took place first. [205]

Q. Now do you recall whether or not the foot brake was in working order on the number one hatch?

A. Yes, it was in working order. I will say that the foot brakes, though, were very mediocre—

Q. Generally, not much good?

A. Well, they would not stop. They might slow it up a little, but they would not stop it. They were designed that way on purpose, they tell me. What the purpose is, I don't know but at any rate they were designed so that they wouldn't hold much, and they don't.

Q. Well, it is a matter of common notoriety that foot brakes on Victory ships aren't much good?

A. They don't hold very good, no.

Q. Now it is possible to operate one of those

(Deposition of James A. Steele.)

winches when the automatic brake isn't working, isn't that right?

A. No, you might move it a few inches, but it would kick out the circuit breaker before it would go very far. In other words, it would load up the motor so hard that the motor couldn't handle that.

Q. The way that is done is that when you're slacking away on a load and you want to stop her, you put her in "go ahead" position, isn't that right?

A. Yes. In other words, in your lowering, you know those automatic electric winches are such that with no load on the hook, it will lower very rapidly automatically, and [206] as the load is on there, they have an automatic electrical dynamic brake. Now you see, they have another brake arrangement on there called a "dynamic" brake which is automatic and integral with the electrical switch affair, which is very complicated on those winches, and at any time the rope feed and the load exceed a certain predetermined value, the dynamic braking takes place and will slow it down; so with no load on the hook, a rapid lowering can be accomplished. But with a load on the hook, it couldn't be accomplished.

Q. Of course with that dynamic brake, you can't stop a load?

A. Oh, no, it merely holds it down to a certain value.

Q. How much of a job is it to tighten up the

(Deposition of James A. Steele.)

bands on one of those winches? That is, on the automatic brake?

A. Oh, I would say it might take two men to do a good job, about an hour and a half.

Q. And did you ever tighten up any of the brakes on the other hatches on the vessel?

A. Not on the Goucher Victory, no.

Q. Do you know what the normal lifetime, according to hours of operation of brake linings on those automatic brakes is?

A. I have never heard that, no; it must be roughly a thousand or two hours, probably. I have never observed electric winches over a long period. I mean, after a long [207] period of years. They are a fairly recent acquisition. I have seen electric winches that have been operating a great deal after they have been operating for five years, and the linings haven't been replaced. The brakes had been tightened up, but the linings hadn't been replaced. Those were General Electric winches, incidentally.

Q. The brake lining behaves about the same way as it does on trucks and automobiles?

A. Yes, that's right.

Q. It has to be adjusted once in a while when they loosen up?

A. They loosen up, that's right. They have quite large braking surfaces in proportion to the load, so that they hold up quite good.

Q. And of course the looser a brake becomes, why the less the amount of tonnage it will stop as a rule? A. That's right.

(Deposition of James A. Steele.)

Q. And it takes two men to tighten up one of these brakes? A. No, one could do it.

Q. What did you say your assistant's name was on the 13th day of May aboard the Goucher Victory—in 1946—was that Calmer?

A. Yes, that was Calmer, uh-huh.

Q. Where was the vessel laying that day? [208]

A. It was at the port of embarkation.

Q. You don't remember which pier?

A. I have forgotten those pier numbers. It seems to me like it was 25, but I couldn't say for sure.

Q. Were you aboard the vessel during all the hours on the 13th day of May? A. No.

Q. What hours were you off the vessel?

A. I was off from five o'clock in the evening until about 10:30.

Q. About 10:30 p.m.? A. Uh-huh.

Q. You were uptown? A. Yes.

Q. And do you know whether or not your assistant, Calmer, was aboard the vessel between the hours of 5 p.m. and 10:30 p.m., on the 13th day of May, 1946? A. Yes, he was aboard.

Q. And did he make any report to you about doing any work aboard the vessel during that time that you were gone on that day?

A. No; after 5 o'clock the electrician is in stand-by duty and only performs work that he is called to do, and he hadn't been called.

Q. You don't serve regular watches when you

(Deposition of James A. Steele.)

are [209] aboard a vessel like that in the capacity of electrician?

A. The maintenance men serve daytime—they work daytimes.

Q. 8 to 5?

A. But if any deck gear is in use, then they have what they call "stand-by time." Then one man is aboard. If they work the winches all night, he stays aboard. I mean he stays at stand-by. He is up and dressed. He isn't just aboard, you see, because naturally they all live there, but he is available for work then, however, he doesn't work unless he is called on. Of course he checks on the things, but he doesn't perform any work unless some condition exists that he is called upon to fix.

Q. Do you keep any record of the work that you do aboard the vessel?

A. No, I don't keep records. Not only electrical, but it is the maintenance proposition.

Q. For example, if you are called to repair a motor or dynamo or do any electrical job aboard the vessel, you don't write down any written work?

A. Well, if it were done after regular daytime hours, there would be a record kept for the purposes of paying overtime. Otherwise—

Q. What sort of a record is that?

A. Well, it is kept by the first assistant engineer, [210] and I don't know if it has any name. I don't know what it is.

Q. Do they have printed forms you fill out?

(Deposition of James A. Steele.)

A. There is a printed form he fills out. The electrician doesn't fill it out, the electrician turns in a report to the first assistant engineer and he logs it up in some form.

Q. Is the nature of the work performed listed?

A. That is listed.

Q. It is filled in in that report?

A. That's right.

Q. For example—

A. It says so many hours spent doing such and such a thing to such and such equipment.

Q. Do you know whether Calmer was aboard when you were gone?

A. Yes, he was aboard.

Q. When you were gone?

A. Yes, he was aboard.

Q. Did you see him before you left?

A. Yes.

Q. Did you see him when you got back?

A. When I got back, yes.

Q. Where was he when you got back?

A. He was in our focsle. We lived together. He was [211] still in his work clothes. He had signed on as assistant electrician.

Q. That day?

A. No, it was a little prior to that, probably—well it was in the middle of the week. Maybe it was Wednesday or something like that of the previous week. I have forgotten the exact day, the signing on day. At any rate, he asked to be allowed to stay

(Deposition of James A. Steele.)

aboard to take care of those things in order to familiarize himself with the equipment. That being all right with me, I let him do the staying.

Q. You say you left the vessel in July?

A. Yes.

Q. You left subsequent to the 13th day of May, 1946? A. Uh-huh.

Q. The vessel left the port at Seattle and proceeded to Japan, is that correct?

A. Yokohama.

Q. Yokohama? A. Yes.

Q. And in Japan you discharged ships' stores?

A. No, we discharged troops and took on ships' stores.

Q. Well, you used the ships' stores?

A. To feed the troops.

Q. You used it all up? [212]

A. Well, not all of them, but we used a fairly good portion of them, so we took on some additional ships' supplies.

Q. Some additional ships' stores?

A. Uh-huh.

Q. And then you returned to Seattle?

A. That's right.

Q. And did you leave the vessel in Seattle on her return?

A. Well, not immediately, but after a few weeks.

Q. Where was the vessel after her return to Seattle from Yokohama?

A. Well, when it left the port of embarkation, it went over to—I have forgotten those pier num-

(Deposition of James A. Steele.)

bers, but at any rate it is up there on some island. They call it—where the rice milling companies are up there.

Q. Harbor Island?

A. Yes. They stayed there a short time and then they moved to the other side of the—let's see, what are the names of those now? It is so close to the main section of town and to the north side from where we had been, on the main section. Some company there was using that pier to do some ship repairs, and they were going to do a few things with this ship.

Q. Well after you loaded ships' stores in Japan, in Yokohama, were the winches ever used again on number one [213] hatch when you were aboard her?

A. Yes, all the winch gear, and by "Gear" I mean the lines and the pulleys and the fair leads and all that sort of thing; they were all gone over by the deck department as a maintenance measure on the return voyage.

Q. But was any cargo or ships' stores or anything loaded or discharged from the vessel?

A. No, nothing loaded. They moved some paint, but they didn't load anything.

Q. By use of the winches, they moved paint from number one? A. Yes.

Q. That is, number one hatch. Well then at no time did you have an exact knowledge of the actual brake test power of the automatic winches on number one hatch on the vessel?

(Deposition of James A. Steele.)

A. No, sir, no such tests were available. And no such test is made. The only test that is ever taken, after the ship is commissioned is just the test of normal usage. In other words, the Bureau of Inspection and Navigation inspects various things, but they do not test the deck gear. They test them in the shipyard before the ship is commissioned and that is the last test it gets.

Mr. Roth: I have no further questions.

Mr. Ransom: I have just one or two. [214]

Further Examination by Mr. Ransom

Q. I want to be sure this brake situation is straight in the record. As I understand it, there is a dynamic braking power in the winches, and in addition there is an automatic brake, and in addition to that there is a foot brake?

A. That's right.

Q. Is that correct? A. Yes.

Q. The dynamic braking power is a slowing rather than a stopping power, is that right?

A. That's right.

Q. The automatic has a stopping power?

A. That's right.

Q. And the foot brake may be either a stopping or a slowing power, but is generally used as a slowing power, is that right? A. That's right.

Q. When you are on stand-by, are you paid stand-by wages of some sort?

A. Yes, overtime rate they call it.

(Deposition of James A. Steele.)

Q. Well then if you do work while you are on stand-by, is your wage scale different from the ordinary stand-by?

A. No, it wasn't at that time.

Q. Well then in fact if you did work, would there be [215] an entry of any work that you would do during stand-by?

A. Very possibly not, if it was done during stand-by hours. On the practical side, probably what would happen if there was something broken down, only emergency measures would be taken during the stand-by hours, and then any repairing that would take place would take place then on the following regular day shift, and some of those, if it was repairing, would be made at the overtime rate even if performed during the daytime hours. So as such, it would have to be written up in order to collect for it.

Q. To your recollection there was no repairing following May 13th on number one winch?

A. No, not on number one.

Mr. Ransom: That is all.

Further Examination by Mr. Poth

Q. Do you know how to drive a winch?

A. Yes, I am not an expert at it, however.

Q. Well let's see, on these winches here, when you want to come back on the winches, that is to lower away, slack away, which way do you put the controls, toward the hatch or away from the hatch?

(Deposition of James A. Steele.)

That is on the number one hatch of the Goucher Victory?

A. On number one—you know, I never used number one winches at all. I used number five, and I suppose [216] that the controllers worked in the same direction. In that case, the lowering direction was back away from the hatch. Yes, that's right, back away from the hatch. But that is the only winch on the Goucher Victory I used, the ones on number five. I would assume that number one was the same, but I couldn't guarantee it.

Q. Is it possible to set the brakes too tight? On one of these automatic winches?

A. Yes, it is.

Q. What will happen if you set them too tight?

A. Well the motor will heat up and kick the breaker off, and then throw the whole thing off the line and it will just stand there and do nothing.

Q. Now isn't it possible to test the braking power of one of these automatic brakes, by, say, loading up a cargo board with a definite amount of weight and then picking it up off the deck and then lowering it away and stopping it?

A. That is the way it is tested. It is lowered and then the power is thrown off and when the power is thrown off the brake is automatically applied and that is the way it is tested at the shipyards before the ship is commissioned. Of course that is the continuous test in handling loads, when you throw the power off, how quick it stops your sling load. [217]

(Deposition of James A. Steele.)

Q. You never made any such tests while you were aboard? A. No.

Q. You didn't see any tests?

A. No, when they had a load on the hook, an authorized winch driver must handle the winch. So I have watched them handle the loads, but I wasn't allowed to handle them myself.

Q. When these ships' stores were being loaded, were they being loaded with cargo boards? Were the stores placed on boards, or were they loaded with net slings?

A. They had cargo boards for use on certain stores and nets for use on other stores.

Q. What type of stores were the nets on?

A. Well I know they used nets on cased goods, and the paint came in on a net sling, if I remember right. I wouldn't say what else. In fact, I don't remember exactly which stores were coming in there or what they came in on.

Q. Do you remember what they used in Japan, whether they used cargo boards or net slings?

A. Well let's see. In Japan I think they used nets. Now I am just going from a hazy recollection, but it doesn't seem to me that they had any boards there. I think they had to use nets.

Q. And who did the longshore work, American soldiers [218] in Japan or the Japanese?

A. No, the Japanese longshoremen.

Q. And once again, on all of the time that you were aboard the vessel, you did not tighten the brakes on any of the winches?

(Deposition of James A. Steele.)

A. I was never called on to make any adjustments.

Q. Well did you ever make any such adjustments?

A. No, I did not ever make any such adjustments.

Mr. Roth: I have no further question.

Mr. Ransom: That is all."

Mr. Franklin: If the Court please, respondents offer the testimony of James A. Steele.

The Court: That deposition is received in evidence as a part of respondents' case-in-chief.

Mr. Franklin: Respondents desire to introduce in evidence the deposition of Kristian Bauer. This deposition, may it please the Court, was taken at Seattle, Washington, August 18, 1948, on behalf of respondents. I was present, and Mr. Poth, Mr. Zabel's associate, was president.

DEPOSITION OF KRISTIAN BAUER

"Direct Examination

By Mr. Franklin:

Q. Would you state your name, please? [219]

A. Kristian Bauer.

Q. Where do you live, Captain Bauer?

A. 517 - 59th S. E., Auburn. That is my mailing address.

Q. How old are you, sir? A. 71.

Q. How long have you been going to sea?

A. 56 years.

(Deposition of Kristian Bauer.)

Q. What type of ships did you begin to sail on?

A. Square rigged ships.

Q. Have you sailed on steam vessels, too?

A. Yes.

Q. When did you begin sailing on steam vessels?

A. In 1927.

Q. What licenses do you hold?

A. Master.

Q. How long have you held a Master's license?

A. Master of sail since 1918, and Master of steam since 1928 or 1929—in January.

Q. At the present time, are you attached to any vessel? A. No.

Q. Are you planning to take the first available assignment, or are you planning on returning to sea in the near future?

A. If one of these company ships needs a man, I will [220] go, but I am not planning.

Q. Mr. Bauer, were you ever stationed aboard the steamship Goucher Victory? A. Yes.

Q. Approximately when did you join her?

A. Well, that I don't know. It was somewhere in the first part of May—no—I think it must have been the 6th of May,—the 6th or 8th of May. I don't remember for sure, because I left another ship and they told me to take a week off and come back and join the Goucher Victory.

Q. What type of ship was the Goucher Victory?

A. It was a Victory ship. It was out as a troop carrier.

(Deposition of Kristian Bauer.)

Q. In what capacity did you join the Goucher Victory? A. Chief Mate.

Q. When you first joined the Goucher Victory, where was the vessel then lying?

A. In the West Waterway, at the Puget Sound Bridge and Dredging Company.

Q. What was being done to her?

A. They were overhauling the troop quarters; repainting and cleaning the troop quarters.

Q. After that was done where did the vessel proceed to?

A. To Pier 36 or Pier 37—I don't remember which. [221]

Q. The Army Port of Embarkation?

A. Yes.

Q. For what purpose?

A. To take on stores and troops.

Q. What kind of stores were you taking on?

A. Well, meat and vegetables, and all kinds of provisions for the troops.

Q. About how many troops did you carry?

A. I don't remember for sure, but I think it was about 2300.

Q. Where were you bound for?

A. Yokohama.

Q. Mr. Bauer, do you remember about what time the vessel left the Puget Sound Bridge & Dredging Company and docked at the Army Port of Embarkation?

A. As far as I remember it, Friday afternoon,

(Deposition of Kristian Bauer.)

on the 10th. Or it could have been Saturday morning—but I think it was Friday, on the 10th.

Q. On the 10th of May, 1946? A. Yes.

Q. During the time you were aboard the vessel over at the Puget Sound Bridge and Dredging Company dock, what kind of winches were aboard the Goucher Victory? A. Electric winches.

Q. And there were how many hatches in the Goucher [222] Victory?

A. There were five, but there were two sets of winches.

Q. How about No. 1?

A. They only had one set.

Q. One set of electric winches? A. Yes.

Q. While the vessel was lying at the Puget Sound Bridge & Dredging Company dock, was any use made of the electric winches at No. 1 hatch?

A. As I remember it, they had the heavy pontoon hatches. They were off. They used the winches to take them off and put them back on.

Q. Did you have occasion while that work was being done at No. 1 hatch, to observe the cargo operations of the electric winches at No. 1 hatch?

A. I didn't pay any special attention to it, but if there had been anything wrong with them I would have noticed it.

Q. Did you notice anything wrong in their operations? A. No.

Q. Did you notice anything wrong with the automatic brakes? A. No, sir.

(Deposition of Kristian Bauer.)

Q. Was there any deficiency reported to you in [223] connection with the automatic brakes, as Chief Mate? A. No.

Q. Were the winches under your supervision and control as Chief Mate? A. Yes.

Q. Do you remember the stevedoring company that loaded for the Army in May, 1946?

A. Rothschild, as far as I remember.

Q. Your testimony is that they began loading on Saturday, May 11, 1946? A. Yes.

Q. On that Saturday, May 11, 1946, how long were you on watch? When did you go on watch and when did you go off watch?

A. I really wasn't on watch, but I was on board up until about 10:00 o'clock in the forenoon. I really wasn't on watch, because Saturday and Sunday you are supposed to get off when you are in port. I really was not on watch, and there was nothing reported to me.

Q. During that Saturday you were on board the vessel, was the Rothschild Company using the gear at No. 1 hatch for use with No. 1 hatch?

A. Yes.

Q. What kind of stores were being placed in No. 1 hatch? [224]

A. Now, let me see—it was mostly case goods and green vegetables.

Q. You then left the vessel on Saturday about 10:00 a.m.?

A. Yes, I think I did. I couldn't be right sure.

(Deposition of Kristian Bauer.)

Q. Did the vessel load stores on Sunday, or do you know? A. No.

Q. Referring to Monday, May 14, 1946, approximately when did you return to the vessel?

A. Before 8 o'clock in the morning.

Q. How long did you remain on the vessel on Monday?

A. Until a little after 5:00 o'clock in the evening.

Q. Who relieved you then?

A. A Mate by the name of Louis Nuss.

Q. During the period of time from 8:00 o'clock a.m. to 5:00 p.m., were you in the vicinity of No. 1, of the winches at No. 1, the electric winches, from time to time?

A. Yes; I was there a few times.

Q. Did you observe any difficulty being experienced by the winch driver in stopping or handling those winches? A. No; none whatsoever.

Q. Did you observe any defective condition with the No. 1 winch which made them interfere with the proper stopping of the winches? [225]

A. No.

Q. Did you see the accident which occurred to a stevedore by the name of Alfred Dillon, at 9:30 that night? A. No.

Q. When did you first hear about that?

A. The next morning, when I came on board.

Q. Who advised you that Mr. Dillon had been injured? A. The night Mate.

(Deposition of Kristian Bauer.)

Q. Were any stevedoring operations conducted on the vessel on Tuesday, May 14, 1946, to your recollection?

A. I do not think they worked in No. 1. They took baggage aboard in No. 5, but I don't think they worked in No. 1.

Q. What occurred on Tuesday, May 14, 1946? Did you load troops on that day? A. Yes.

Q. Approximately what time did the vessel leave the Port of Embarkation on the evening of Tuesday, May 14, 1946?

A. Close around 8:00 o'clock.

Q. Where you bound for? A. Yokohama.

Q. On the way to Yokohama, did you have any occasion to use the electric winches at No. 1 hatch?

A. No; not out at sea.

Q. When you got to Yokohama, was any use made of the [226] electric winches at No. 1 hatch?

A. Yes. We discharged part of the stores, but we had more stores than were required to bring us back to the Coast, and the Army took what we had over, whatever we could spare—the Army took them ashore.

Q. Was No. 1 hatch used to discharge those excess stores? A. Yes.

Q. Did you observe the operation of the winches at that time at No. 1 hatch?

A. The winches worked all right.

Q. Were repairs affected on any part of those winches at any time on May 18, 1946?

(Deposition of Kristian Bauer.)

A. Not as far as I know. Of course the electricians could have worked on them, but there was nothing said to me about it.

Q. Would you have known if they were working on the winches?

A. Yes, I most likely would, if there had been any big repairs on it. Of course they tested all the winches during the voyage, but I don't remember them doing anything to them.

Q. Mr. Bauer, when you left Yokohama, where did you proceed?

A. Back to Seattle. [227]

Q. And then you arrived in Seattle approximately when in 1946—just approximately?

A. That would be in the first part of June.

Q. Some time in June, 1946? A. Yes.

Q. If you left Seattle on May 14, 1946, for Yokohama, how many days would it take you to cross?

A. I don't remember whether it was 11 or 12 days.

Q. And the same amount of time to return?

A. A day or so, more or less.

Q. Did you leave the Goucher Victory then?

A. Yes. I left her when the Army Transport Service took her over entirely.

Q. When was that?—can you tell us?

A. I think it was in the beginning of July.

Q. At any time until you left the vessel in 1946, to your knowledge, was there any defective condition of the electric winches at No. 1 hatch?

(Deposition of Kristian Bauer.)

A. No.

Q. You didn't see any?

A. I didn't see any.

Q. Mr. Bauer, do you waive the reading and signing of this deposition you have given here today, so that you will not have to return here and read and sign it? A. Yes. [228]

Mr. Franklin: Is that agreeable with you, Mr. Poth?

Mr. Poth: Yes.

Mr. Franklin: You may cross-examine.

Cross-Examination

By Mr. Poth:

Q. While you were aboard the Goucher Victory, was there anyone, any member of the crew, also aboard the vessel, who was qualified and capable of making repairs and adjustments to the winches aboard this vessel?

A. There were two electricians there.

Q. Did you at any time see them checking or adjusting the winches, while you were aboard the vessel?

A. I don't remember that I seen them in No. 1, but I noticed they were working on No. 2 one day.

Q. What day was that?

A. That I don't remember.

Q. Do you recall what they were doing to the No. 2 winch?

A. No. I think they were checking over the motors and brushes, and things like that.

(Deposition of Kristian Bauer.)

Q. Would you please describe the mechanism you have referred to as the automatic brake, in relation to a winch? [229]

A. Well, I don't know as I can. It is a brake. When the juice is turned on at the back, to either hoist or lower, then the brake goes on. It is a magnetic brake. When the juice is turned off the automatic turns that brake down tight.

Q. What do they clamp it on to?

A. Just bring it together tight around the drum. There is a regular brake band around the drum, and when the electricity is turned off, it automatically closes that brake, clamps it down tight on the drum so it cannot move.

Q. What kind of substance is this brake made of?

A. It is a steel band, like the brakes on an automobile. It works on the same principle.

Q. It had a brake lining?

A. It had a brake lining.

Q. Is that brake lining similar to the brake lining used on automobiles?

A. Yes. I think it is the same kind of stuff.

Q. Did you ever see that brake lining on the automatic brake of a winch?

A. I never saw a brake taken off, to look at the inside of one of them, but as far as I could see, it was the same thing.

Q. Did that brake lining have to be replaced from time to time? [230]

(Deposition of Kristian Bauer.)

A. Maybe it would have to be.

Q. What operation would you take on the winch when the brake lining became worn?

A. Well, I imagine it would have a tendency to not hold as good as when it is new.

Q. Do you know what the average life of one of those brakes linings is? A. No.

Q. Do you know how to operate a winch, yourself? A. Yes.

Q. Did you ever drive a winch?

A. Well, that is a long time ago. I have never been driving electric winches, but I have been driving steam winches.

Q. Were these single or double winches?—That is, from the point of operation?

A. There are two separate winches, but they are placed in such a position that you work one with the left hand and one with the right hand.

Q. In other words, one man operated two winches?

A. One man operated two winches.

Q. Were these winches equipped with manual brakes?

A. That I don't remember. I don't think they were. I don't remember whether the electric winches were equipped with foot brakes or not. [231]

Q. Where were the winches situated on the No. 1 hatch, forward or aft?

A. In the after part of the hatch.

Q. Is it possible to adjust the brakes on these

(Deposition of Kristian Bauer.)

winches, that is, the winches on the No. 1 hatch of the Goucher Victory?

A. Oh, I imagine it is possible to adjust the brakes on any of the winches.

Q. What sort of mechanism is furnished for adjusting those brakes?

A. Just tighten up a bolt, a nut.

Q. Where is the bolt and nut placed on the winch?

A. I think they are just underneath. I am not sure. I don't remember. I think they are underneath.

Q. That would be underneath the winch drum?

A. Well, not altogether underneath; a little on one side, so they could get it out. Most likely on the outer part.

Q. There is a nut there that you tighten up to tighten the brakes? A. Yes.

Q. Do you know whether anyone ever tightened that nut while you were aboard the vessel?

A. No.

Q. Referring again to the No. 1 winch— [232]

A. (Interposing): —No, there was not.

Q. Was there any material aboard that vessel for lining the brakes on the winch drums?

A. That I do not know, but I imagine there was. The electricians would have charge of that, anything like that.

Q. Did you at any time ever operate the winch yourself, that is, the winch on No. 1 hatch?

(Deposition of Kristian Bauer.)

A. No; not on No. 1.

Q. What supplied the power for the winches on the No. 1 hatch of the Goucher Victory?

A. They had dynamos and generators down in the engine room to generate it.

Q. How was that power applied to the winch drum?

A. There is a motor there, and gear from the motor, engaging the gear on the winch drum.

Q. What type of motor was it?

A. As far as I remember, it was General Electric in those ships.

Q. Was the motor inside or outside of the winch drum, in relation to the ship's rail?

A. That I don't remember. I don't remember that.

Q. Were all the winches identical on this vessel?

A. Yes.

Q. On this No. 1 hatch you say there were two levers used to operate the winch, is that correct?

A. Yes. Have you ever noticed the operating of the lever on the straight gear?

Q. Yes. A. Well, it is the same thing.

Q. But they were so placed that one man could have a lever in each hand? A. Yes.

Q. As he stood operating the winches?

A. Yes.

Q. How did those levers operate, up and down, or crosswise?

A. When the levers are straight up, they stop,

(Deposition of Kristian Bauer.)

and the juice is off. You turn them one way for hoisting and the other way for lowering. I think you bring them back to lower, and forward to hoist.

Q. That is, you went forward to hoist, is that right?

A. I think so. I wouldn't swear to that, but as far as I remember, that is the way they work—you turn them forward to hoist, and backwards to lower.

Q. Were you familiar with the weight of the beams in the tween deck of the No. 1 hatch?

A. No. I couldn't say for sure.

Q. How long were the beams?

A. Somewhere close to 20 feet.

Q. I am referring now to the hatch beams. [234]

A. Yes. Somewhere close to 20 feet.

Mr. Poth: I think I have no further questions.

Mr. Franklin: That is all. Thank you."

Mr. Franklin: If the Court please, respondents offer in evidence the deposition of Kristian Bauer.

The Court: This deposition is received as part of respondents' case-in-chief. You may proceed.

JACOB PETRI

called as a witness by and on behalf of respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Franklin:

Q. Will you state your name, please?

(Testimony of Jacob Petri.)

A. Jacob Petri.

Q. Would you spell your last name, please?

A. P-e-t-r-i.

Q. How old are you? A. 54.

Q. Where do you live?

A. 2822—36th West. [235]

Q. Are you single or married?

A. Married.

Q. Do you live with your family? A. Yes.

Q. What is your occupation?

A. I work as foreman for Rothschild Stevedoring Company.

Q. How long have you been engaged in stevedoring work?

A. By that, you mean all my experience on the waterfront?

Q. All your experience.

A. The first time I worked on the waterfront in 1914.

Q. How long did you work as a stevedore before you became a foreman?

A. Up to about 1939.

Q. Since 1939 have you been a foreman?

A. Yes.

Q. Employed exclusively by Rothschild Stevedoring? A. Yes.

Q. In the course of that experience, state what contact or experience you had in operating electric winches.

A. Well, while I was working as a longshore-

(Testimony of Jacob Petri.)

man, I was a deck man. By that, I mean I was operating winches or tending hatch all the time.

Q. Electric winches and steam winches?

A. Electric winches came into being—although I operated quite a few of them, they didn't come in very strong until about 1930, when they started coming out.

Q. Since 1930, have you had continuous experience with electric winches? A. Yes, sir.

Q. On May 13th, 1946, where were you employed?

A. I was employed for Rothschild Stevedoring on the Goucher Victory.

Q. Did you have a gang working under you?

A. Yes.

Q. Was Mr. Dillon one of that gang?

A. Yes, sir.

Q. Had you known Mr. Dillon previously?

A. Yes, I did.

Q. Many years? A. Yes.

Q. And did I ask you what time you went to work on May 13th with the gang?

A. We went to work at 6:00 p.m. that evening.

Q. That was Monday evening?

A. Monday evening.

Q. Had you worked previously in No. 1 hatches on that ship the previous day? [237]

A. No, not that day.

Q. What work did you do upon turning the gang to? What hatch did you proceed to unload?

(Testimony of Jacob Petri.)

A. When we turn the gang to, I believe we started working No. 2 hatch first.

Q. Later, did you start to work at No. 1 hatch?

A. Yes, sir.

Q. About what time, do you think?

A. I think it was about 8:30 when we went to No. 1 hatch.

Q. What is usual or customary about the stevedores when you are going to work on a hatch on a new ship as to what examination and testing is made of the winches?

A. Well, as a rule the winch driver runs the empty hook back and forth to see if the winches are in operating order.

Q. Who was the winch driver operating No. 1 hatch from 8:30 on until Mr. Dillon's injury?

A. Paul Rigney.

Q. Did you observe him testing No. 1 winches to make sure they were satisfactory in every way?

A. Well, I couldn't—I don't remember that particular instance.

Q. Did Mr. Rigney at any time prior to Mr. Dillon's accident make any complaint to you that No. 1 winches were [238] faulty or defective in any particular? A. No, he did not.

Q. How long after you began operating No. 1 winches until Mr. Dillon's injury occurred?

A. Approximately two hours after we started working that hatch.

(Testimony of Jacob Petri.)

Q. During that two hour period, were you steadily in the vicinity of No. 1 hatch?

A. Well, I was either at the hatch or on the dock, back and forth.

Q. Did you observe cargo being loaded from the dock into the No. 1 hatch? A. Sir?

Q. Did you observe from time to time the cargo was being loaded into No. 1 hatch? A. Yes.

Q. What did you observe, if anything, as to the operation of the winches at No. 1 hatch during the loading of the cargo?

A. I didn't observe anything unusual.

Q. Did you notice at any time that the winches were slipping? A. No, I didn't.

Q. Was any complaint made to you at any time either by Mr. Rigney or any other member of the crew that the No. 1 [239] electric winches were slipping or defective in any way?

A. Not as I remember.

Q. If a request had been made or your attention had been called to that fact, what would you have done?

A. I would have called the ship's electrician.

Q. Would you have reported it to the electrician or the first Mate?

A. Either one that I ran into first.

Q. What type of winches were they at No. 1?

A. Electric winches.

Q. Up to what capacity? What was their capacity? A. Their capacity is about five ton.

(Testimony of Jacob Petri.)

Q. What was the weight of the draft of the sling loads or net loads that were going into the hold? Would you estimate, prior to Mr. Dillon's injury?

A. I don't suppose we hoisted anything much over a ton.

Q. Did you see Mr. Dillon's injury?

The Court: Do you mean, did you see the happening?

Q. Did you see his accident?

A. Yes, I saw the accident.

Q. Where were you standing immediately prior to the accident?

A. I was standing at the hatch, looking down into the hatch.

Q. When you say you were standing at the hatch, what [240] hatch was that?

A. No. 1 hatch.

Q. Which side of the hatch were you looking into?

A. I was looking from the starboard side of the hatch.

Q. You were on the starboard side?

A. Yes.

Q. Where was Mr. Dillon standing at that time?

A. Mr. Dillon was on the lower tween decks, on the port side of the hatch.

Q. He was across the square from you?

A. The opposite side of the hatch.

The Court: Opposite side of the hatch from whom?

(Testimony of Jacob Petri.)

The Witness. From me.

The Court: Did you say you witnessed the accident?

The Witness: I saw it.

Q. How many men, roughly, were working at the hold at the time of Mr. Dillon's accident?

A. Eight.

Q. How many on the port side and how many on the starboard side?

A. Usually four on each side.

Q. What were the men doing immediately prior to Mr. Dillon's accident?

A. They were placing a strongback. [241]

Q. Would you describe the approximate weight of this strongback?

A. This particular strongback wasn't very heavy. I presume it weighed not over 800 pounds.

Q. Could you give us an idea as to the dimensions of it?

A. It was an I beam, 10 by—I believe about 10 by 14.

The Court: What do you mean by that, 10 inches?

The Witness: 10 inches in width and 14 feet in length.

Q. Was this a king beam? A. Yes, sir.

Q. Does a king beam have a raised flange?

A. It has a raised flange in the center to hold the hatch boards in place.

Q. Who was the winch driver?

(Testimony of Jacob Petri.)

A. Paul Rigney was the winch driver at that time.

Q. Was anybody else standing about the hatch?

A. This particular hatch, we had to use two hatch tenders.

Q. Why.

A. Because there is a companion way right in front of the winch driver.

Q. Was any stevedore giving signals to the winch [242] driver because it was a blind hatch?

A. Yes.

Q. Who?

A. A fellow by the name of Ford.

Q. Was there a fellow by the name of Sellman?

A. Yes, Sellman and Ford were the hatch tenders.

Q. How was this beam rigged? What rigging did it have on?

A. We raised it with hook spreaders.

Q. And it has been testified that the hook spreaders consist of two falls that run from the hook and fit into holes in the strongback?

A. Yes.

Q. Is that roughly correct?

A. That is roughly it.

Q. Was this beam originally raised from the poopdeck below?

A. Well, you couldn't say that was the poop-deck.

Q. Well, the forecastle head deck?

(Testimony of Jacob Petri.)

A. Well, we call it the orlop deck on those ships, and the beam was laying in the wing of the orlop deck.

Q. That is the deck upon which you were standing?

A. That is the deck they were going to cover up.

Q. After the spreader was secured to the strongback, what happened next? Who gave any orders and what was done? [243]

A. They picked the strongback up and held it over the hatch.

Q. Who is "they"? A. The longshoremen.

Q. Who gave the signal to Rigney to raise the beam? A. Sellman and Ford.

Q. Then what did Mr. Rigney, the winch driver, do with the beam?

A. They raised it up first so they could swing it over the hatch and they lined it up with the keeper.

Q. What is the keeper? Is that the slot?

A. That is the slot the beam fits into.

Q. With what speed was the strongback lowered in the vicinity of the slot?

A. I don't remember just how fast they were traveling. As near as I could see, it wasn't unusual.

Q. Then what happened with reference to the strongback as it was being lowered in the vicinity of the slot on the tween deck?

A. As they lowered it, one side went into the keeper and the other side didn't.

Q. When you say one side went into the keeper,

(Testimony of Jacob Petri.)

do you mean one side of the strongback went into the slot? A. That's right.

The Court: By "side" do you mean end, or do you [244] mean side?

The Witness: It went in—

The Court: Do you mean the end or the side of the strongback went into the slot?

The Witness: The end.

Q. Which end or which side of the tween decks did that occur on?

A. Do you mean by that, which side—

The Court: Which went in first?

The Witness: The starboard end went in first.

Q. That was the end across from where?

A. From Dillon.

Q. What angle did it go in?

A. It went on just a slight angle.

Q. What happened to the port end of the strongback? A. It rested on top of the keeper.

Q. And by the keeper, you mean the slot?

A. That's right.

Q. Is it common or uncommon when you are lowering a beam or strongback for the strongback, the end of the beam, to get fouled up in the slot?

A. It is very common.

Q. Could you give us any idea how high Dillon's end of the strongback was above the slot?

A. When we first landed it? [245]

Q. Yes.

A. He had hold of the top of the strongback at that time.

(Testimony of Jacob Petri.)

Q. The first thing was done, the strongback was lowered into position and fouled on the starboard end? A. It fouled on the port end.

Q. Fouled on the port end? A. Yes,

Q. What was the position of the end, the position of the beam with relation to the slot at that time on the port side?

A. On the port side, it just rested on top of the keeper.

Q. Now, what was done with reference to remedying or correcting that condition?

A. Well, first they tried to jump it in place with a hatch cover.

Q. Let me ask you, when that condition occurred, what was done by Rigney, the winch driver, as to shutting off the juice?

A. The winches were idle at that time.

Q. What was first done?

A. They tried to jump it into place with a hatch cover.

Q. Who tried to jump it in? [246]

A. The fellows that was working on that side.

Q. On what side?

A. On the port side, that was working with Dillon.

Q. Did you observe Mr. Dillon trying to jump this end into position? A. Yes.

Q. How long were they engaged in doing so?

A. Approximately a minute or a minute and a half.

Q. With what results? A. With no results.

(Testimony of Jacob Petri.)

Q. During this minute, was there any movement in the position of the beam? A. No.

Q. Or was the winch moving the beam in any way? A. No.

Q. What was the position of the hook they hooked in from the spreader into the port hole on the beam? A. That hook come unhooked.

Q. Why did it come unhooked?

A. When they landed the beam, being as that side didn't go into the keeper, it was higher so that hook come out of the hole.

Q. Did it come loose?

A. Yes, it come loose.

Q. Which way did it go with reference to forward or [247] aft of the beam?

A. One of the fellows was holding the hook with the line.

Q. Was there a tag line on those spreaders?

A. Yes.

Q. Would you tell the Court what a tag line it?

A. A tag line is to—when they hook on to the beam, they can guide the beam whichever way they want to swing.

The Court: Did you make a statement with reference to whether or not there was a tag line?

The Witness: Yes, sir.

Q. How many guide lines were there?

A. One on each hook.

Q. One on each side? A. Yes, sir.

Q. Did one of the stevedores have hold of this tag line? A. Yes.

(Testimony of Jacob Petri.)

Q. After the efforts of Mr. Dillon and his associates to free that port end of the beam failed, what was done next that you observed?

A. Dillon was going to put the hook back in through the hole of the strongback so they could hoist it again.

Q. Would you describe to the Court the position of Mr. Dillon's body as he reached over to get this port [248] spreader that had become unhooked?

A. He was down on his knees, and he supported himself with his right hand on the end of the strongback and as he reached out with the hook to put it in the hole, the weight of his body, I presume, caused the strongback to fall into the keeper.

Q. Did you observe the position of Mr. Dillon's right hand immediately before the injury?

A. No, I didn't.

Q. Could you see what part of the strongback he had hold of? A. Yes.

Q. What part was it?

A. He had the end of the strongback.

Q. When you say "the end of the strongback" where was that with reference to the top flange?

A. That would be—well, supposing this is a strongback, it would be like this (indicating).

Q. Right on the end? A. Right on the end.

Q. Did you see Mr. Dillon bear any weight on this fouled strongback from his body?

A. As he reached out, I presume he put weight on the strongback.

(Testimony of Jacob Petri.)

Mr. Zabel: I think that is a presumption, if the Court please.

The Court: The objection is sustained, and the statement of the witness about what he presumed is stricken and the Court will disregard it.

Q. From what you saw, what did you conclude Mr. Dillon had done with reference to placing the weight of his body against the beam?

Mr. Zabel: I think that calls for a conclusion of the witness.

Mr. Franklin: I think it is physical facts.

The Court: The objection is sustained. He will have to state what he saw.

Q. What did you see with reference to the position of Mr. Dillon's body against the—

A. While he was in the act of putting the hook into the hole in the strongback, the strongback fell into place and immediately I saw that he was pinned, so one of the boys put the hook into the strongback anyway and they were going to pick it up. I told them not to move that beam because I was afraid it would cut his fingers off, so I ran down and we lifted the strongback up with a piece of dunnage and freed his hand.

Q. Was there any way Mr. Dillon could have secured the port spreader into the hole in the beam without placing his right hand on the end of the beam? [250]

A. No, hardly. He would have to support himself some way.

(Testimony of Jacob Petri.)

Q. At any time after you first observed Mr. Dillon and his associates trying to free this fouled strongback on the port side, were the winches operating?

A. At the time they was trying to enter this—

Q. No, at any time from the time they were trying to free the fouled end of the strongback until Mr. Dillon's accident, were the winches in operation?

A. No.

Q. Did you finally succeed in freeing Mr. Dillon's hand?

A. Yes, we freed his hand in a very few minutes.

Q. Where was his hand caught?

A. It was caught in between the end of the strongback and the hatch coaming.

Q. Did you see that Mr. Dillon was given immediate medical attention?

A. Yes, I took him to the ship's doctor.

Q. Afterwards, after Mr. Dillon's accident, was the beam placed in position?

A. The beam was in position after that.

Q. After the accident? A. Yes.

Q. How much longer were the electric winches operated [251] at No. 1 hatch?

A. We finished covering up that hatch.

Q. How long did that take?

A. It took them about an hour, I suppose.

Q. Did you observe anything defective in the operation of the winches during that hour period?

A. Well, during that hour period, during the

(Testimony of Jacob Petri.)

time they were covering up, I wasn't around the hatch. I was with Dillon most of the time.

Q. Were any complaints made to you by Mr. Sellman or Mr. Rigney relative to the condition of the winches? A. No, not to me.

Q. After Mr. Dillon's accident? A. No.

Q. If those winches had been unsatisfactory at any time or unsafe or defective, what would you have done as foreman for Rothschild Stevedoring Company?

A. I would have reported it, went to the First Mate or the electrician on the ship.

Q. And if they could not have been repaired satisfactorily, what would you have done?

A. We wouldn't operate them.

Mr. Franklin: That is all. [252]

Cross-Examination

By Mr. Zabel:

Q. How far above the point where Mr. Dillon was standing were you? A. About 30 feet.

Q. You were about 30 feet above?

A. About that, I would say.

Q. And you were on the opposite side of the hatch? A. That's right.

Q. Do you recall whether or not any repairs were made in any of the hatches on the ship?

A. Not to my knowledge.

Q. Whether or not any repairs were made in the No. 2 hatch? A. Not that I know of.

(Testimony of Jacob Petri.)

Q. How was the beam raised from Mr. Dillon's hand?

A. With a piece of dunnage, or just a piece of lumber, a piece of 2 by 4.

Q. A piece of 2 by 4?

A. A piece of lumber.

Q. This beam weighed about 1000 pounds?

A. No. It weighed 800 pounds, it was a heavy beam.

Q. You took a piece of 2 by 4? A. Yes.

Q. Who applied the 2 by 4? [253]

A. I directed the boys. You see, you can get hold of the edge of the hatch coaming. We lifted it about two inches.

The Court: What persons had hold of the 2 by 4 and applied it to the beam to raise the beam?

The Witness: Two of the boys that was working on Dillon's side.

The Court: Do you know their names?

The Witness: No, I don't. I don't know which two of the men was working on that side with him.

Q. Did you have 2 by 4's available there?

A. There was lumber laying around there. There usually always is lumber on the hatch of a ship for dunnage.

Q. But you were not loading lumber that day?

A. No.

Q. No type of lumber? A. No.

Q. Do you recall the lowering of the beam, that the signal was given by the hatch tender?

A. Yes.

(Testimony of Jacob Petri.)

Q. And he did lower the beam down into this No. 1 hold?

A. From the main deck, do you mean?

Q. Yes. [254]

A. The beam was in the deck they were working.

Q. They had to raise it and lower it?

A. They just picked it up and swung it over the hatch and then lowered it into place.

Q. How high did they pick it up?

A. Possibly two feet.

Q. About two feet? A. About that.

Q. And then they moved it over the slot?

A. Over the hatch and over the slot.

Q. And from that point is where the beams were let down from that two-foot point?

A. Something like that.

Q. On which side was Mr. Sellman?

A. He was on the starboard side.

Q. How far were you from him?

A. I was standing right beside him.

Q. And you saw him give the signals?

A. Yes.

The Court: On what deck were you when you witnessed the accident?

The Witness: On the main deck.

The Court: How many decks above the deck on which Mr. Dillon was working?

The Witness: As this ship is arranged, I think that is about four decks down.

(Testimony of Jacob Petri.)

The Court: The one he was on was about four decks below the one on which you were?

The Witness: Yes, about 30 feet from where we were standing.

Q. Would you say that this beam was not raised by the winch after it got on his hand?

A. Yes, that's right. It wasn't raised with the winch after it fell on his hand.

Q. You came running down and then you told them to wait.

A. I told them to not move the winches, to wait until I got down there.

Q. And they didn't?

A. No, they didn't move the winches.

Q. Was Ford on the opposite side?

A. No, he was also on the starboard side, but he stood out to the rail. In order to operate this operation, you have to stand in a triangle position. One man stood at the hatch, the other man out to the rail, and the winch driver naturally was behind this house, and that is the reason for the two hatch tenders.

Q. These spreaders were supposed to have guide lines? A. Yes.

Q. Are those guide lines part of the ship's gear?

A. Part of the ship's gear.

Q. Did you notice the spreaders as to where it was spliced? A. No, I didn't.

Q. You didn't see any splicing on the spreader?

A. No I didn't notice the splice on the spreader.

(Testimony of Jacob Petri.)

Q. When they have these lines, don't they use those to guide those strongbacks into place if they are on those spreaders? A. That's right.

Q. And that is the safe and proper way to do it?

A. Yes.

Q. Were they using these lines? A. Yes.

Mr. Franklin: Who is "they"?

Q. Were the lines in use by the crew between decks at the time they were lowering this spreader?

A. Yes.

Q. They were?

A. They steadied the beam before they put it in place with the lines. Then after they steady it with the lines, a man usually takes hold of it. One or two men take hold of it to steady it down into the slot.

Q. It was steadied, and did the hatch tender give the signal to lower away? [257]

A. To lower it into place.

Q. And it came down? A. That's right.

Q. That is when Mr. Dillon was injured?

A. No, Mr. Dillon was not injured when the beam was landed the first time.

Q. Wasn't he trying to place the strongback in the slot? A. Yes, he was.

Q. And he was doing that at the time it was being lowered away?

A. Yes, he was in the whole operation. After it was landed—

Mr. Franklin: Just continue your answer.

Mr. Zabel: I didn't mean to interrupt you.

(Testimony of Jacob Petri.)

The Witness: After it was landed, one side of the beam didn't go into the slot and as I said before, they tried to jump it into place with a hatch cover. It wouldn't go down so they decided to hook on to it again, to pick the beam up again and during that, Dillon wasn't hurt until he reached out to re-hook the beam with this hook spreader. That is when the beam fell into place and caught his hand.

Q. You are sure that those lines were there? You are positive about that? [258]

A. Yes.

Q. Are there occasions when they are not there?

A. There are occasions they don't have them on, but if they don't, we always get some to put on.

Q. You were up there when his hand was caught and that is when you came running down?

A. Yes, I ran down to where they were.

Q. After his hand was caught?

A. That's right, after his hand was caught.

Q. You didn't run down after they fouled the strongback?

A. No, I was on deck until the time his hand was caught.

Q. You saw it was fouled there, but you still stayed there?

A. Yes. You could see his hand was fouled and the man was hurt, so I run down to help them get that hand out of there.

Q. In other words, you ran down after the strongback was—in other words, Mr. Dillon was

(Testimony of Jacob Petri.)

hurt while you were still up there on the top deck?

A. Yes.

Q. On the starboard side?

A. I was on the starboard side about four decks above Dillon. [259]

Mr. Zabel: I think that is all.

Redirect Examination

By Mr. Franklin:

Q. How many feet below was Mr. Dillon from where you were standing?

A. I would say about 30 feet.

Q. How was the lighting?

A. It was very good.

Mr. Franklin: That is all. Thank you.

The Court: You may step down.

(Witness excused.)

The Court: At this time, we will take a ten minute recess.

(Recess)

Mr. Franklin: If the Court please, may I have this document marked for identification purposes? This, Mr. Zabel, is a document known as "Warship-steve contract" between the United States of America War Shipping Administration and the Rothschild Stevedoring Company.

The Court: Will you wait until it can be marked so that the record will leave no doubt as to what you are referring to. [260]

(Addendum to Stevedoring Contract marked Respondent's Exhibit A-2 for identification.)

The Court: Let the record show that your statement was made with reference to what has been marked.

Mr. DuPuis: On behalf of the third party respondent, we have no objection to the authenticity of Respondent's Exhibit A-2, but on behalf of the third party respondent we do object to it on the ground that it is incompetent, irrelevant, and immaterial, on the ground that there is no evidence at this stage of the cause to support a charge of liability or negligence against the third party respondent bringing them within the purview of this contract.

Mr. Franklin: Subject to those objections, if the Court please, respondent offers Respondent's Exhibit A-2 in evidence.

Mr. Zabel: I personally have no objection.

The Court: It is now admitted. The objection is overruled.

(Respondent's Exhibit A-2 received in evidence.) [261]

RESPONDENT'S EXHIBIT A-2

Form

Addendum to

Warshipsteve 4/1/44

Pacific Northwest

and Soucal

Addendum to Contract No.

WSA 4-1487

DA-WSA 4-420

Addendum To Stevedoring Contract

This Addendum entered into as of the 1st day of July, 1944 by and between The Administrator, War Shipping Administration (hereinafter called the "Administrator"), representing the United States of America, and Rothschild International Stevedoring Company, a corporation organized and existing under the law of the State of Washington, a partnership consisting of.....an individual doing business as.....whose mailing address is 1706 Northern Life Tower.....(hereinafter referred to as the "Stevedore"),

Witnesseth:

Whereas, the parties hereto entered into a contract (numbered as above and hereinafter called the "contract") to which this is an addendum for the performance of stevedoring services; and

Whereas, the Contract provides, in Paragraph 5(c), Part I, that it may be amended, modified or supplemented in writing at any time by mutual consent of the parties thereto; and

Respondent's Exhibit A-2—(Continued)

Whereas, the parties desire to amend and modify the Contract in the respects hereinafter set forth, in order to clarify the same and effectuate the understanding of the parties at the time said Contract was made and entered into;

Now, Therefore, The Administrator and the Stevedore mutually agree as follows:

Item 1. The first paragraph of Paragraph 2.(c) of Part I of the Contract is hereby amended to read as follows:

"2.(c) As payment for supervision, use of gear, overhead and compensation for the loading or discharging of mail, baggage, specie and bullion, ship's and subsistance stores, livestock, animals, live poultry and birds, scrap and returned war materials and war equipment, for miscellaneous work in connection with trimming, leveling or shifting of ballast (when such work does not involve the discharge or loading of the same ballast), for loading and discharging ballast when tonnage is not known, or when it is impossible to segregate ballast handled on a tonnage basis from that handled on a man hour basis, for cleaning holds (whether or not cargo is loaded therein or discharged therefrom), for discharging or loading excess dunnage not used for the stowage of cargo handled by the Stevedore, for transferring cargo from hold to hold, and for any other service which is not provided for in this contract but which the Administrator may specifically request to have performed, as follows:"

Respondent's Exhibit A-2—(Continued)

Item 2. Paragraph 1.(a) of Part II of the Contract is hereby amended to read as follows:

1.(a) The term "direct labor" as used in this contract means all longshoremen, winchmen, operators of mechanical equipment, hatch foremen, walking bosses, gearmen, assistant foremen, foremen, and other workmen, directly employed in performing the work. "Direct labor" shall not include any general supervisor of the work (by whatever title designated), except in connection with work described in Paragraph 2.(c), Part I hereof, and such other work as the Administrator may designate, and provided no work on a tonnage basis is being performed on the same vessel by the Stevedore simultaneously therewith."

Item 3. Paragraph 3.(b) of Part II of the Contract is hereby amended to read as follows:

"3.(b) For work enumerated in sub-paragraph (a) (1) of this paragraph, other than handling lines on docking, undocking and shifting where the Stevedore does not load or discharge cargo, the Stevedore shall be remunerated only as provided in Paragraph 2.(a) of Part I hereof, and shall receive no payment for supervision, overhead, etc., as provided in Paragraph 2.(b) of Part I hereof, except when the entire work in the vessel is handled on a man hour basis, for which the Stevedore shall be reimbursed as provided in Paragraph 2.(c) of Part I, and for work enumerated in sub-paragraph (a) (2) of this paragraph, and for handling lines

Respondent's Exhibit A-2—(Continued)
on docking, undocking, and shifting where the Stevedore does not load or discharge cargo, the Stevedore shall be remunerated as provided in Paragraph 2.(c) of Part I hereof; provided, however, that to the extent that any work is necessitated by the negligence or wrongful acts or omissions of the Stevedore or its employees, the Stevedore shall receive no remuneration whatsoever therefore."

Item 4. Except as hereby amended, all the terms, covenants and conditions of the Contract as they now exist shall remain unchanged and in full force and effect.

Item 5. This Addendum and the amendments effected thereby shall be effective as of the date hereinabove first set forth.

In Witness Whereof, the parties have duly executed this agreement in quadruplicate as of the day and year first above written.

UNITED STATES OF
AMERICA,
By E. S. LAND,
Administrator, War
Shipping Administration.

By /s/ [Illegible]
For the Administrator.

ROTHSCHILD-INTERNA-
TIONAL STEVEDORING CO.

Respondent's Exhibit A-2—(Continued)

[Seal] By /s/ R. C. CLAPP,

President.

(For Corporation).

Attest:

/s/ H. G. TIEFEL,
Asst. Secretary.

Approved as to form:

/s/ WILLIAM J. BAU,

For the General Counsel War Shipping Adminis-
tration.

Counterpart II

Form	Contract No. WSA 4-1487
Warshipsteve	DA-WSA 4-420
4/1/44	
Pacific	
Northwest	

Stevedoring Contract

War Shipping Administration

Rothschild International Stevedoring Co.

Contractor

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Part I:

This Negotiated Contract, entered into as of the 1st day of July, 1944, between the Administrator, War Shipping Administration (hereinafter referred to as the "Administrator") representing the United States of America, and Rothschild International Stevedoring Company, a corporation organized and existing under the laws of the State of Washington, a partnership consisting of.....
....., an individual doing business as.....
....., whose mailing address is 1706 Northern Life Tower, Seattle, Washington (hereinafter referred to as the "Stevedore").

Witnesseth

That in consideration of the reciprocal covenants and agreements of the parties hereinafter set forth, the parties hereto do mutually covenant and agree as follows:

Respondent's Exhibit A-2—(Continued)

1. Relationship of the Parties. The Administrator engages the Stevedore, as independent contractor, to do and perform all the work herein stated subject to the terms, covenants and conditions of this contract and to such rules, regulations, directions, and orders as may be issued by the Administrator from time to time, at such docks, piers, or wharves in the Port(s) of Puget Sound Ports and adjacent water ports and with respect to such cargo and vessels, as the Administrator may from time to time direct or designate. The Stevedore hereby accepts such engagement and agrees to do and perform all the work required by it to be done or performed under this contract in an economical and efficient manner and in accordance with the best operating practices, to exercise due diligence to protect and safeguard the interests of the Administrator in all respects, and to avoid any delay, loss, or damage whatsoever to the Administrator.

2. Remuneration. As full and complete remuneration for the work to be done and performed by the Stevedore, the Administrator agrees to pay the Stevedore (subject to the Special Provisions set forth in Paragraph 3 of this Part I) a sum of money equal to the total of the following amounts:

2. (a) As payment for disbursement made or obligations incurred in connection with the work, a sum equal to the total of the amounts paid by the Stevedore as wages, insurance and other author-

Respondent's Exhibit A-2—(Continued)

ized costs, as provided in Paragraph 6(a), (b), (d) and (e) of Part II hereof, and payable by the Stevedore as taxes as provided in Paragraph 6(c) of Part II hereof.

2. (b)(1) As payment for supervision, use of gear, overhead, and compensation on all cargo other than as described in sub-paragraphs (b) (2), (b) (3), (b) (4) and (b) (5) of this Paragraph 2, at the rate of twenty-two and one-half (22½c) cents per ton.

Except as otherwise provided a ton, as used in this Contract means a ton of weight or measurement as customarily freighted in the trade in which the vessel being loaded or discharged is operated; provided, that, if freighted at a rate per 100 pounds, 2240 pounds shall be considered as one ton, and, if freighted at a rate per cubic foot, 40 cubic feet shall be considered as one ton; provided, further, that as to lumber or logs and piling, payment to the Stevedore shall be computed only on the basis of measurement tons, and 600 feet B.M. of lumber or logs shall be considered one measurement ton and 30 lineal feet of piling of any diameter shall be considered one measurement ton. For the purpose of computing payment to the Stevedore for loading and discharging cargo for the armed services, a ton means 2240 pounds or 40 cubic feet whichever produces the greater tonnage.

2.(b)(2) As payment for supervision, use of

Respondent's Exhibit A-2—(Continued)

gear, overhead and compensation on bulk cargo at the rate of twenty (20c) cents per ton. For the purpose of computing payment to the Stevedore under this sub-paragraph, tonnage on inbound cargo shall be as per outturn weight and tonnage on outbound cargo, where satisfactory shipped weights are furnished, shall be on the basis of such shipped weights; provided, however, that if such bulk cargo is not weighed on outturn the manifest tonnage shall be used for the purpose of computing payment.

Bulk cargo as used in this sub-paragraph is defined as cargo (regardless of quantity or amount) which is not hand-stowed in the vessel, except for trimming.

2.(b)(3) As payment for supervision, use of gear, overhead and compensation on all cargo (other than cargo described in sub-paragraph (b)(2) of this Paragraph 2) loaded or discharged at terminals, where, by the custom of the port, a terminal company or other agency delivers or receives cargo at ship's tackle, and lumber loaded at mills, at the rate of twenty-four (24c) cents per ton, and on raw sugar in bags discharged at refineries at the rate of twenty (20c) cents per ton.

2.(b)(4) As payment for supervision, use of gear, overhead and compensation on all dry cargo loaded on or discharged from the deck of tankers at the rate of eighteen (18c) cents per ton.

Respondent's Exhibit A-2—(Continued)

2.(b)(5) As payment for supervision, use of gear, overhead and compensation for discharging damaged or solidified cargo, as follows:

At the rate of fifteen (15c) cents per man hour for each man hour of direct labor (as that term is defined in Paragraph 1 of Part II hereof) employed in such discharging.

2.(c) As payment for supervision, use of gear, overhead and compensation for the loading or discharging of mail, baggage, ship's and subsistence stores, livestock, animals, live poultry and birds; scrap and returned war materials and war equipment of any description; empty drums, barrels, boxes, cylinders, kegs and reels; for cleaning holds (whether or not cargo is loaded therein or discharged therefrom), for discharging or loading dunnage from and to holds in which the Stevedore does not load or discharge cargo, for transferring cargo from hold to hold, and for any other service which is not provided for in this contract but which the Administrator may specifically request to have performed, as follows:

At the rate of fifteen (15c) cents per man hour for each man hour of direct labor (as that term is defined in Paragraph 1 of Part II hereof) be employed in the loading or discharging, as the case may be, of such items or in performing the services above stated.

Respondent's Exhibit A-2—(Continued)

It is understood and agreed that the property or things handled pursuant to the provisions of this sub-paragraph regardless of how described are not "cargo" within the meaning of that word as used in Paragraph 2(b) of this Part I, but the same shall be considered to be "cargo" and the services in connection with the same shall be considered to be "work", for every other purpose of this contract.

3. Special Provisions.

3.(a) The term "cargo" shall include ballast. Ballast may be bulk cargo or general cargo, as the case may be.

3.(b) It is understood that this contract does not apply to the handling of liquid cargo not packaged in containers, unless the Administrator specifically requests such handling pursuant to Paragraph 2(c) of this Part I.

3(c) It is understood that if any one lift such as an unboxed airplane, landing barge, torpedo boat, locomotive, or other article, stowed on the deck of a vessel (whether dry cargo or tanker), measures in excess of 150 tons, it shall, for the purpose of computing payment to the Stevedore hereunder, be considered as only 150 tons.

3.(d) When the Stevedore is a self-insurer under Paragraph 9 of Part II hereof, it shall be

Respondent's Exhibit A-2—(Continued)
reimbursed for its self insurance of liability as employer and under State workmen's compensation laws and longshoremen's and harbor workers' compensation laws as follows:

State workmen's compensation and Employer's Liability:

\$ None per \$100.00 of payroll

Longshoremen's and Harbor Workers' Compensation:

\$ None per \$100.00 of payroll

4. Time and Manner of Payment.

4.(a). The Stevedore's remuneration shall be paid to it by the Administrator as soon as is practicable after the completion of each vessel operation worked under the provisions of this contract.

4.(b) Money due and owing to the Stevedore shall be paid to it only upon the submission of invoices properly executed and duly supported and certified. All such invoices for payment under this agreement shall refer to the date and number of this contract.

4.(c) In the event an invoice submitted for remuneration for the work, or any portion of such invoice is not properly supported or certified, the Administrator may nevertheless make partial payment thereof or payments on account of such portion of such invoice as has been properly supported

Respondent's Exhibit A-2—(Continued)
or certified. Such partial payment or payments on account shall not be deemed or held to be a waiver of the Administrator's right to revise or adjust such partial payment or payments on account in view or upon the basis of any data or information later received from or submitted by the Stevedore.

4.(d) The Administrator may make partial payments or payments on account of any portion or part of the work performed on a given vessel operation whenever the Stevedore would be entitled to final payment of remuneration for all of the work performed on such operation and under the same terms and conditions as such final payment would be made.

4.(e) If at any time the Stevedore is in default with respect to the furnishing of reports required by Paragraph 10 (c) of Part II hereof or otherwise, the Administrator may withhold payment of moneys otherwise due and owing to the Stevedore.

5. Duration of Contract.

5.(a) This contract is effective as of the day and year hereinabove first set forth with respect to operations commenced on or after said day and year, and, unless sooner terminated, shall extend until six months after the cessation of hostilities in the present war as proclaimed by the President. As of the effective date of this contract, any previous contract or agreement by the Stevedore with

Respondent's Exhibit A-2—(Continued)

the Administrator for stevedoring services shall terminate, without relieving the Stevedore of the responsibility for the loading or discharging of any cargo which the Stevedore is handling on such effective date under any such previous contract or agreement, and such termination shall neither affect nor relieve either party of any liability or obligation that may have accrued prior thereto.

5.(b) This contract may be terminated upon thirty (30) days' written notice by either party to the other party hereto; provided, however, that notwithstanding any such termination the Stevedore shall, at the option of the Administrator, continue to be responsible for the completion of any work which the Stevedore is performing on the effective date of such termination. Termination or expiration of this contract shall neither affect nor relieve either party of any liability or obligation that may have accrued prior thereto.

5.(c) This contract may be amended, modified or supplemented in writing at any time by mutual consent of the parties hereto. This contract may not be amended, modified or supplemented otherwise than in writing.

6. Contract Documents.

This contract consists of Part I and Part II (the latter being hereto attached and made a part hereof by reference) and such other instruments as may

Respondent's Exhibit A-2—(Continued)
be made by the parties in accordance with the provisions of this contract. All the provisions of said Part II and instruments are part of this contract as though hereinabove set out at length.

In Witness Whereof, the parties hereto have duly executed this contract in quadruplicate as of the day and year first above written.

UNITED STATES OF
AMERICA,

By E. S. LAND,
Administrator, War
Shipping Administration.

By /s/ [Illegible]

For the Administrator.

(For Corporation):

ROTHSCHILD INTERNA-
TIONAL STEVEDORING
COMPANY.

[Corporate Seal]

By /s/ R. C. CLAPP,
President.

Attest:

/s/ H. G. TIEFEL,
Asst. Secretary.

Approved as to form:

/s/ JAMES L. ADAMS,
For the General Counsel, War
Shipping Administration.

Respondent's Exhibit A-2—(Continued)

(This Certificate is to be completed only if the
Stevedore is a corporation.)

I, H. G. Tiefel, certify that I am the duly chosen, qualified, and acting Assistant Secretary of Rothschild International Stevedoring Company, a party to this contract, and, as such, I am the custodian of its official records and the minute books of its governing body: that R. C. Clapp, who signed this contract on behalf of said corporation, was then the duly qualified President of said corporation; that said officer affixed his manual signature to said contract in his official capacity as said officer for and on behalf of said corporation by authority and direction of its governing body duly made and taken; that said contract is within the scope of the corporate and lawful powers of this corporation.

[Corporate Seal]

/s/ H. G. TIEFEL,

Asst. Secretary.

Part II:

1. Definitions.

1.(a) The term "direct labor" as used in this contract means all longshoremen, winchmen, operators of mechanical equipment, hatch foremen, walking bosses, gearmen, assistant foremen, foremen, and other workmen, directly employed in performing the work. "Direct labor" shall not include any general supervisor of the work (by whatever title designated).

Respondent's Exhibit A-2—(Continued)

1.(b) The term "wages" as used in this contract means (1) compensation paid for straight time, overtime, travel time, waiting and standby time, penalty pay, transportation, (including hire of busses, barges, tugs, or other vehicles or vessels for transportation), board and lodging, and any other compensation or benefits of direct labor, if direct labor is entitled thereto under the provisions of applicable collective bargaining agreements or under other wage scales, approved by the Administrator; (2) averaged wage rates approved by the Administrator for specified classifications of direct labor.

The term "wages" as used in this contract does not include contributions or payments made by the Stevedore for the maintenance of hiring halls as such contributions or payments are part of the Stevedore's general supervisory and administrative expenses and are not expenditures for wages.

1.(c) The term "work" as used in this contract means all work, duties, services, operations and functions in connection with stevedoring activities, and also other cargo handling and other similar activities, required hereunder to be done or performed by the Stevedore.

1.(d) The term "employee" as used in this contract means employee, servant and agent.

1.(e) The term "approval" as used in this contract includes ratification.

Respondent's Exhibit A-2—(Continued)

2. Duties of the Stevedore. The Stevedore shall:

2.(a) At all times while the vessel is being worked, provide not less than one general supervisor in direct charge of the work on each vessel; load and discharge cargo; do and perform all the duties and functions usually and customarily done and performed by a Stevedore; furnish all labor of every nature and description and all gear and mechanical or other equipment (except as provided in Paragraph 5 of this Part II) necessary for the most efficient loading or discharging of the vessel, and transport the same to and from the vessel or the pier or terminal where the work is to be performed; provided that in performing the duties required in this Paragraph 2 the Stevedore will be reimbursed for furnishing lift trucks and cranes in accordance with the terms of Paragraph 6(g), Part II hereof where such lift trucks and cranes are used in performing duties under this Paragraph 2 which are peculiar to wartime operations as determined by the Administrator; provided, further, that the Administrator shall have the right to furnish gear and mechanical or other equipment which shall be used by the Stevedore in performing the duties of the Stevedore under this Paragraph 2 in which event the Stevedore will not be entitled to receive the compensation provided in Paragraph 6 of Part II hereof.

Respondent's Exhibit A-2—(Continued)

2.(b) While currently loading or discharging a vessel, pile cargo above man high and break down cargo from above man high and remove and handle cargo to or from piles on the pier or in the pier sheds, and to or from cars, barges, lighters, scows, or booms alongside; stow cargo in or discharge cargo from any part of the vessel including deep tanks, 'tween decks, bunker space, fore and aft peaks, and any other part of the vessel and/or the vessel's deck, in the order directed by and in a manner satisfactory to the Administrator and/or the Master of the vessel or his agent; provided that where, by the custom of the port, a terminal company or other agency receives or delivers cargo at ship's tackle, the Stevedore shall not do any work for the account of the Administrator prior to the delivery of cargo at ship's tackle on loading and after delivery of cargo at ship's tackle on discharging.

3. Additional Duties of the Stevedore.

3.(a) The Stevedore shall, when requested by the Administrator:

3.(a)(1) handle lines on docking, undocking and shifting; rig and unrig all gear, rigging and equipment necessary for loading or discharging, including loading or discharging heavy lifts when handled by ship's gear; shift lighters within reach of ship's tackle; take off and put on all hatches, strongbacks, hatch beams, hatch boards and tar-

Respondent's Exhibit A-2—(Continued)

paulins; load, discharge, shift and lay all dunnage; shift cargo on the vessel within the same hold; and do blocking, lashing, building shifting boards, and such other work as is required in the proper loading and stowing of the vessel.

3.(a)(2) clean holds, discharge or load dunnage from and to holds in which the Stevedore does not load or discharge cargo, or transfer cargo from hold to hold in the vessel. Dunnage removed from the vessel shall remain the property of the Administrator.

3.(a)(3) use special mechanical equipment, as defined in and pursuant to the provisions of Paragraph 6(f) of this Part II.

3.(a)(4) perform the stevedoring, as to the stowage aboard vessels, under the supervisory inspection of the Board of Marine Underwriters or other marine surveyor designated by the Administrator. The services of said Board or surveyor will be supplied and paid for by the Administrator.

3.(b) For work enumerated in sub-paragraph (a)(1) of this Paragraph, other than handling lines on docking, undocking and shifting where the Stevedore does load or discharge cargo the Stevedore shall be remunerated only as provided in Paragraph 2(a) of Part I hereof, and shall receive no payment for supervision, overhead, etc., as provided in Paragraph 2(b) of Part I hereof; and for work enumerated in sub-paragraph (a)(2) of this Paragraph, and for handling lines on dock-

Respondent's Exhibit A-2—(Continued)

ing, undocking, and shifting where the Stevedore does not load or discharge cargo, the Stevedore shall be remunerated as provided in Paragraph 2(c) of Part I hereof; provided, however, that to the extent that any work is necessitated by the negligence or wrongful acts or omissions of the Stevedore or its employees, the Stevedore shall receive no remuneration whatsoever therefor.

4. General Labor and Other Provisions.

4.(a) Overtime in performing any work shall be incurred or performed by the Stevedore only upon the authorization of the Administrator; provided that the Stevedore, whenever so authorized, shall work overtime.

4.(b) The Stevedore recognizes the relation of trust and confidence established between it and the Administrator by this contract and agrees to furnish its best skill and judgment in planning, supervising and performing the work, to make every effort to complete the work in the shortest time practicable and to cooperate fully with the Administrator in furthering the latter's interests. The Stevedore further agrees to furnish efficient business administration and superintendence in performing the work.

4.(c) Simultaneously with the execution of this contract and at such other times as requested by the Administrator, the Stevedore shall submit to

Respondent's Exhibit A-2—(Continued)

the Administrator a schedule or schedules of wages and contractual working conditions applicable to direct labor for which the Administrator shall be obligated to pay the Stevedore under Paragraph 6(a) of this Part II. The Administrator may disapprove any such wages and contractual working conditions within 60 days from the date hereof or the date of compliance with any such request. If within such period of 60 days the Administrator disapproves such schedule or schedules, in whole or in part, the Administrator shall communicate such disapproval to the Stevedore in writing. The Administrator shall disallow and deny reimbursement for any additional cost incurred by the Stevedore through payments to direct labor of any items disapproved by the Administrator. If the Stevedore, pursuant to any previous contract or agreement with the Administrator for stevedoring services has submitted a schedule of wages and contractual working conditions presently applicable to such direct labor and such schedule has been approved by the Administrator, no additional schedule shall be required upon the execution hereof, and the schedule so approved shall be the basis upon which the obligation of the Administrator to reimburse the Stevedore under Paragraph 6(a) of this Part II shall be measured.

Any changes in said schedules of wages and contractual working conditions which shall increase the cost of the work performed hereunder shall

Respondent's Exhibit A-2—(Continued)

be submitted to the Administrator in schedule form. The Stevedore agrees that it will, upon request of the Administrator, refer all schedules submitted in accordance with provision of this Paragraph 4(c), including such changes, to the War Labor Board or such other department or agency of the United States of America as has specific jurisdiction of the matter involved and if required by the War Labor Board or such other departmental agency, shall obtain its approval thereof.

4.(d) The Stevedore shall neither engage nor employ any person or organization to perform any of the work, whether as employee, sub-contractor or otherwise, after the Administrator shall have notified the Stevedore to terminate, dispense with or to refuse to employ the services of such person or organization; this provision shall be effective despite any previous approval of any such engagement or employment by the Administrator.

4.(e) The Stevedore agrees that in the performance of the work it will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. In the event the Stevedore enters into a sub-contract, in accordance with the provisions of Paragraph 13 of Part II hereof, a similar provision prohibiting discrimination shall be inserted in such sub-contract.

4.(f) The Stevedore shall not employ any convict labor in performing the work.

Respondent's Exhibit A-2—(Continued)

4.(g) No laborer or mechanic doing any part of the work contemplated by the contract in the employ of the Stevedore or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight (8) hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this sub-paragraph. The wages of every laborer or mechanic employed by the Stevedore or any sub-contractor engaged in the performance of this contract shall be computed on a basic day rate of eight (8) hours per day and work in excess of eight (8) hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this sub-paragraph, a penalty of five (\$5) dollars shall be imposed upon the Stevedore for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight (8) hours upon said work without receiving compensation computed in accordance with this sub-paragraph, and all penalties thus imposed shall be withheld for the uses and benefit of the Government.

4.(h) Whenever any actual or potential labor dispute is delaying or threatens to delay the timely

Respondent's Exhibit A-2—(Continued) and efficient performance of the work the Stevedore shall immediately give notice thereof to the Administrator. Such notice shall include all relevant information with respect to such dispute.

5. Duties of the Administrator. The Administrator shall furnish and maintain in good working order all necessary masts, booms and winches and the necessary steam or power therefor; blocks, ropes for falls, dunnage, and necessary lights on wharves, piers and vessels; derricks or cranes when required to handle lifts in excess of the vessel's lifting capacity if, in the opinion of the Administrator, heavy lifts cannot satisfactorily be handled by rigging the vessel therefor.

6. Computation of Certain Elements of Compensation. The amounts referred to in Paragraph 2(a) of Part I hereof are the following:

6.(a) The amount legally expended by the Stevedore in payment of wages, as defined in Paragraph 1(b) of this Part II.

6.(b) The amount expended by the Stevedore for premiums of insurance policies written pursuant to the provisions of Paragraph 9 of this Part II, or, the amount to which the Stevedore may become entitled as a self-insurer of certain of the above risks under the terms of this contract, including, if specific approval has been given for the use of the Retrospective Rating Plan, any addi-

Respondent's Exhibit A-2—(Continued)

tional premiums which may develop, and any assessment which may be made under a policy issued in a mutual company.

6.(c) An amount equal to all taxes payable by the Stevedore (only employer's contribution) pursuant to the Social Security Act and applicable unemployment insurance laws, in respect to the wages paid as per sub-paragraph (a) of this Paragraph.

6.(d) The amount expended by the Stevedore, when working in the stream, in transporting gear from pier or wharf to the place where such gear is to be used, and return.

6.(e) The amount of any other costs incurred and paid by the Stevedore at the written order or approval of the Administrator, if such written order or approval specifically authorizes a given additional cost as an extra item of cost.

6.(f) If rented, seventy-five (75%) per cent of the actual rental charge to the Stevedore, or, if owned, an allowance for use, of special mechanical equipment or gear specially designed for the loading or discharging of bulk cargo, and the full actual rental charge to the Stevedore, or, if owned, an allowance for use, of special mechanical equipment or gear to be used in lieu of ship's winches for the loading or discharging of cargo other than heavy lifts or bulk cargo, when any such special

Respondent's Exhibit A-2—(Continued)
mechanical equipment or gear is rented or owned by the Stevedore and its rental and/or use is requested or approved by the Administrator.

6.(g) Amounts to be determined by the Administrator as compensation for the use of lift trucks and cranes furnished by the Stevedore pursuant to Paragraph 2 of Part II hereof.

7. Credits to Administrator.

7.(a) The Stevedore shall make appropriate billings to the persons or organizations liable therefor, according to existing tariffs applicable to the work or according to such other tariffs as may be recognized by the Administrator, for all sums payable by such persons or organizations for loading or discharging lighters or cars which are handled direct from ship to lighter or car or vice versa. The Stevedore shall exercise due diligence in making such billings and in collecting charges so billed and shall maintain accurate records and books of account with respect thereto and furnish such reports covering the same as may be required by the Administrator; provided that when the Stevedore exercises due diligence in performing its duties under this paragraph, it shall not be liable to the Administrator for sums uncollected at the request of the Administrator or which otherwise prove to be uncollectible. The Administrator will, if practicable, assist the Stevedore in collecting such sums from the persons from whom or organizations from which the same are due. Any and all such accounts

Respondent's Exhibit A-2—(Continued)

receivable and any and all money so collected shall be and become the property of the Administrator. Moneys so collected shall be remitted by the Stevedore to the Administrator promptly after the end of the month in which collected, or, at the option of the Administrator, may be credited against moneys then or thereafter due and owing from the Administrator to the Stevedore. Accounts receivable shall, at the Administrator's option, be transferred and assigned (without recourse) by the Stevedore to the Administrator; provided, that in such event the Stevedore shall nevertheless remain obligated to exercise due diligence in assisting in the collection thereof.

7.(b) It is the intent of the parties that the Administrator reimburse the Stevedore only the actual cost of insurance required in the performance of the work. Since such actual cost in some instances cannot be determined until expiration of the policies and since the Stevedore will receive payment at the completion of each operation, the Stevedore agrees that with respect to policies of insurance for premiums on which it is to be reimbursed directly or indirectly by the Administrator the Stevedore will refund to the Administrator the proportionate share of return premiums due from policies written under Premium Discount, Retrospective Rating or other special rating plans, as well as dividends received from policies issued in mutual, participating or other dividend paying com-

Respondent's Exhibit A-2—(Continued)

panies, all as may be provided in Auditing and Accounting Instructions issued or to be issued by the Administrator. The Administrator's pro rata share of any and all moneys so obtained by the Stevedore shall be and become the property of the Administrator. Money so obtained shall be remitted by the Stevedore to the Administrator promptly after the end of the month in which obtained or at the option of the Administrator may be credited against moneys then or thereafter due and owing from the Administrator to the Stevedore.

8. Liability of Stevedore. While performing the work Stevedore shall, except as provided in Paragraph 9(e) hereof, be responsible for any and all loss, damage or injury (including death, wherever used in this contract) to persons, cargo, vessels, their stores, apparel or equipment, wharves, piers, docks, lighters, barges, scows, elevators, cars, car-floats, or other property or thing, arising through the negligence or fault of the Stevedore, its employees, gear or equipment; provided, however, that the Stevedore's responsibility to the Administrator, War Shipping Administration, for any and all loss, damage or injury, as hereinabove in this paragraph enumerated, shall be limited in dollars to the amount of insurance provided for in Paragraph 9 of this Part II.

9. Insurance Requirements and Indemnification.

9.(a) The Stevedore shall procure, maintain

Respondent's Exhibit A-2—(Continued)

during the term of this contract, and pay for one or more policies of insurance insuring it as follows:

9.(a)(1) Standard Workmen's Compensation and Employer's Liability Insurance, and Longshoremen's and Harbor Workers' Compensation Insurance, or such of these as may be proper under applicable state or federal statutes. The Stevedore may, however, be a self-insurer against the risks in this sub-paragraph (1) mentioned, if it has obtained the prior approval of the Administrator thereto, such approval to be given upon the submission of satisfactory evidence that the Stevedore has duly qualified as such self-insurer under applicable provisions of law.

9.(a)(2) Public Liability Insurance subject to \$50,000/\$250,000 limits.

9.(a)(3) Property Damage Liability Insurance (which shall include any and all property, whether or not in the care, custody or control of the Stevedore) in an amount of \$250,000 on account of any one accident; provided that such policy or policies shall contain a so-called deductible clause as respects all risk of loss or damage specified in Paragraph 8 of this Part II, except the risk of loss, damage or injury to persons; provided, further, that as respects loss or damage to the vessel, its stores, apparel or equipment, the first \$500 of any such loss or damage shall be the risk of and for the account of the Administrator, and as respects any other loss or damage to which said so-called deduc-

Respondent's Exhibit A-2—(Continued)

tible clause applies, the first \$500 of any such loss or damage shall be the risk and for the account of the Stevedore.

9.(a)(4) Such other or additional insurance as the Administrator may from time to time specifically approve or require.

9.(b) The Administrator reserves the right to require the Stevedore to insure against any risk, hazard or casualty under the so-called Comprehensive Rating Plan, or other rating plan prescribed by the Administrator, if such risk, hazard or casualty is insured against pursuant to this contract or the premium of such policy of insurance is directly or indirectly paid for by the Administrator.

9.(c) All policies of insurance required under the terms of this contract to be carried by the Stevedore or for premiums on which it is to be reimbursed by the Administrator shall:

9.(c)(1) be written in such insurance companies as the Administrator may direct, and in the absence of such direction, shall be written in American insurance companies; provided, however, that where the Stevedore has heretofore carried such insurance or any part thereof in a foreign company admitted to do business in the State involved, and having assets in the United States, or has carried such insurance in Lloyd's of London, the continuation of such insurance is permitted in the absence of direction to the contrary;

Respondent's Exhibit A-2—(Continued)

9.(c)(2) by appropriate endorsement or otherwise waive all right of subrogation against the United States of America, provided that where the Stevedore is a self-insurer as provided in Paragraph 9(a)(1) hereof or obtains, by assignment or otherwise, any claim, demand or cause of action of any of its employees, the Stevedore agrees to and does hereby waive any and all such claims, demands, causes of action and rights of subrogation against the United States of America arising or resulting from the risk or liability so self-insured;

9.(c)(3) by appropriate endorsement or otherwise, provide that no cancellation thereof shall be effected unless thirty (30) days' prior written notice thereof has been given to the Administrator, addressed to the Director of War-time Insurance, War Shipping Administration, Washington 25, D. C.;

9.(c)(4) by appropriate endorsement or otherwise, provide that in the event of cancellation at the request of the insured upon cancellation or termination of this contract, such cancellation will be on a pro rata basis; and

9.(c)(5) by appropriate endorsement or otherwise, provide that three copies of any endorsement written subsequent to the issuance of the policy and affecting the coverage of such policy shall be transmitted by mail to the Director of Wartime Insurance, War Shipping Administration, Washington 25, D. C. at the time such endorsements are issued.

Respondent's Exhibit A-2—(Continued)

9.(d) A duplicate original or certified copy and two copies or two certificates, of each policy of insurance required under the terms of this contract to be carried by the Stevedore or for premiums on which it is to be reimbursed by the Administrator, shall be forwarded forthwith to the Director of Wartime Insurance, War Shipping Administration, Washington 25, D. C., and may be by him approved or disapproved as to adequacy of protection and propriety of the premium charge or rate. The certificate, if any, must show the rate of premium on the policy, and the waiver of subrogation and notice of cancellation provisions.

9.(e) The Stevedore's work is incident to war activities of the Government and will involve risks and hazards far in excess of those normally incident to peace time commercial operations. To induce the Stevedore to undertake the performance of the work for the compensation herein provided, and thus obtain for the Administrator the resulting benefit of such reduced compensation, the Administrator undertakes to and does indemnify the Stevedore and hold it harmless against any loss, expense (including expense of litigation) and liability to and claims of third persons because of loss, damage or injury to persons, cargo, vessels, their stores, apparel or equipment, wharves, piers, docks, lighters, barges, scows, elevators, cars, carfloats, or other property or thing, arising through the negligence or fault of the Steve-

Respondent's Exhibit A-2—(Continued)

dore, its employees, gear or equipment, all subject, however, to the following conditions and limitations.

9.(e)(1) The undertaking of the Administrator shall be applicable only and limited to the amount such loss, expense or liability arising from any single catastrophe, accident or occurrence exceeds (a) for Bodily Injury Liability the sum of \$50,000 each person, and the sum of \$250,000 per accident, and (b) for Property Damage the sum of \$250,000 per accident, or (in either event) the sum of insurance approved or required to be carried in excess of these limits, whichever sum is greater.

9.(e)(2) The undertaking of the Administrator shall not be applicable and the Administrator shall have no obligation or liability in respect of such undertaking or otherwise, in situations in which such loss, expense, or liability is due in whole or in part to wilful and deliberate disregard of instructions of the Administrator or to the personal failure to exercise good faith or insofar as the character of the work permits under wartime operations, that degree of care normally exercised under like conditions in the performance of the Stevedore's peace time commercial operations by the elected corporate officers of the Stevedore or by the representative of the Stevedore having supervision and direction of all operations at any place where the Stevedore may perform services hereunder.

9.(e)(3) As soon as practicable after the occur-

Respondent's Exhibit A-2—(Continued)

rence of any event from which the obligation of the Administrator to hold the Stevedore harmless against loss, expense, and liability might arise, written notice of such event shall be given by the Stevedore to the Administrator, which notice shall contain full particulars of such event. If claim is made or suit is brought thereafter against the Stevedore as the result or because of such event the Stevedore shall immediately deliver to the Administrator every demand, notice, summons, or other process received by it or its representatives, and the Administrator shall provide appropriate attachment or appeal bonds or undertakings where required in the course of such litigation.

9.(e)(4) The Stevedore shall cooperate with the Administrator and, upon the Administrator's request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct (including defense) of suits; and the Administrator shall reimburse the Stevedore for reasonable actual out-of-pocket expense, other than loss of earnings, incurred in so doing. The Stevedore shall not voluntarily, except at its own cost, make any payment, assume any obligation or incur any expense, other than for such immediate medical and surgical relief to others as shall be imperative at the time of said occurrence of such event.

Respondent's Exhibit A-2—(Continued)

9.(e)(5) This undertaking of the Administrator to hold the Stevedore harmless against loss, expense, and liability, as herein in this Paragraph 9 provided, shall not create or give rise to any right, privilege, or power in any person or organization, except the Stevedore, nor shall any person or organization be or become entitled to join the Administrator as a co-defendant in any action against the Stevedore brought to determine the Stevedore's liability or for any other purpose; provided, however, that as to any risk borne or assumed by the Administrator through his undertaking above set forth, the Administrator shall be and hereby is subrogated by the Stevedore to any claim, demand or cause of action against third persons or organizations which exists or may arise in favor of the Stevedore, and the Stevedore shall, if so required, forthwith execute a formal assignment or transfer of such claims, demands or causes of action.

10. Audit, Reports and Records

10.(a) All items hereinabove set forth in Paragraph 2 of Part I hereof shall be subject to detailed audit by the Administrator. The Administrator may require adjustment or deny remuneration, payment or reimbursement for any expenditures by or work of the Stevedore for such items to the extent to which, in the Administrator's opinion, such expenditures have been made or work has been performed in contravention of any outstanding instructions or

Respondent's Exhibit A-2—(Continued)
orders or were unreasonable, improvident or excessive.

10.(b) The Stevedore shall keep complete and accurate records and books of account showing details of all income and expense incident to or derived from the performance of this contract, including, but not limited to, all revenue and the cost of all items set forth in Paragraph 2 of Part I hereof. The method of accounting employed by the Stevedore shall be subject to the approval of the Administrator but no material change will be made therein if the same conforms to good accounting practice and is sufficient for the purposes of this contract.

10.(c) The Administrator and his employees shall at all times have free and unrestricted access to the premises of the Stevedore and to the work and shall have the right to inspect, examine, audit, and make copies of the Stevedore's books, records, correspondence, vouchers, and memoranda of every description pertaining to the work. The Stevedore shall make such reports to the Administrator concerning the work, this contract, and the Stevedore's financial operations and standing, as the Administrator may determine or from time to time require. The Stevedore shall, without charge to the Administrator and without receiving additional remuneration or payment, keep and preserve all books, records, correspondence, vouchers, memoranda and reports of every description hereinabove in this

Respondent's Exhibit A-2—(Continued)

paragraph referred to for no less than six years from the date upon which final payment of a particular operation under this contract is made.

11. Disputes. Except as otherwise specifically provided in this contract all questions and disputes arising under this contract concerning questions of fact and which are not disposed of by mutual agreement shall be decided by the Administrator who shall reduce his decision to writing and mail a copy thereof to the Stevedore by registered mail. Within thirty (30) days from said mailing, the Stevedore may appeal to the Administrator, War Shipping Administration. The decision of the Administrator, War Shipping Administration, shall be final and conclusive upon the parties hereto. Pending decision of a question or dispute the Stevedore shall diligently proceed with performance of the work.

12. Assignments. The Stevedore shall not sell, assign or transfer, either directly or indirectly or through any reorganization, merger or consolidation, or by operation of law, this contract or any interest therein or moneys due or to become due thereunder, except pursuant to the Assignment of Claims Act of 1940 and with the approval of the Administrator; provided, however, that payment by the Administrator to any assignee of moneys due or to become due hereunder shall be deemed to be approval by the Administrator of such assignment, but only to the extent that such payments are made by him.

Respondent's Exhibit A-2—(Continued)

13. Subcontracts. The Stevedore shall notify the Administrator in writing whenever any portion of the work is to be performed by any other person or organization, whether as agent, subcontractor or otherwise. Without the approval of the Administrator, the Stevedore shall not make any arrangement or agreement whereby the work or any portion thereof is to be performed by any such person or organization and, in the event of such approval, the Stevedore shall be responsible to the Administrator for any action taken or work done by such person or organization. Any employee and any such person or organization selected or appointed by the Stevedore in connection with its performance of the work shall, despite any approval by the Administrator, be solely the agent of the Stevedore and not, in any respect, the agent of the Administrator.

14. Termination for Cause.

14.(a) In the event the Stevedore refuses or fails to do and perform the work in a manner satisfactory to the Administrator and with due diligence, or fails to comply with any of its obligations hereunder or is performing the work in bad faith, the Administrator may, by written notice, and without prejudice to any other right or remedy of the Administrator, terminate the right of the Stevedore to proceed with performance of the work or may terminate this contract or may undertake to complete the work (through his employees or by con-

Respondent's Exhibit A-2—(Continued)

tract), or may exercise any or all of such privileges. In the event of such termination, the Administrator will pay to the Stevedore, in accordance with the terms of Paragraph 2 of Part I hereof, the remuneration theretofore accrued under the terms of Paragraph 2 of Part I hereof, less any amounts which the Stevedore owes or for which it may be liable to the Administrator on account of breach of this contract, or otherwise. In the event the Administrator undertakes to complete the work, he shall be entitled to use such of the premises, gear and mechanical or other equipment of the Stevedore as may be necessary to the completion of the work, and the Stevedore shall be entitled to receive as remuneration therefor the reasonable rental value thereof as determined by the Administrator.

14.(b) The Stevedore shall be under no liability to the Administrator of any kind or nature whatsoever in the event that the Stevedore should fail to perform any work hereunder by reason of any labor shortage, dispute, or difficulty, or any strike or lockout or any shortage of material or any act of God or peril of the sea or any other cause beyond the control of the Stevedore whether or not of the same or similar nature; or shall do or fail to do any act in reliance upon instructions of military or naval authorities; provided, that this paragraph shall not be construed to relieve the Stevedore of its obligations promptly to comply with Paragraph 22 of this Part II. Provided, further, that if the work

Respondent's Exhibit A-2—(Continued)

performed hereunder shall be under circumstances where either the Navy or War Department has elected to exercise all supervision thereof, the Government shall be entitled forthwith to undertake completion of the work and the exercise of all privileges in connection therewith, whether the stoppage of such work should result from a cause or condition for which the Stevedore is not responsible or otherwise.

15. Custom of the Port. No rule or custom of the port in conflict with any provision or term of this contract will be binding upon the Administrator, unless the Stevedore is legally obligated to comply with the same pursuant to the laws of the United States or the laws of a state thereof.

16. Waivers. Any action by the Administrator in waiving any provision or provisions of this contract at any particular time or times shall not be deemed a waiver of such provision or provisions at any future time nor to require any other or similar indulgence on any other occasion.

17. Member or Delegate Clause. No member of or delegate to Congress or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, except to the extent allowed by Title 18 U.S. Code Section 206.

Respondent's Exhibit A-2—(Continued)

18. Warranty Against Contingent Fees. The Stevedore warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Administrator the right to annul the contract, or, in his discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by the Stevedore upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Stevedore for the purpose of securing business.

19. Extra Work. The Administrator will neither remunerate nor make any payments to the Stevedore for any extra work performed in connection with the work, except as provided in Paragraph 6(e) of Part II hereof.

20. Status of Employees. All employees of the Stevedore or of any other person or organization employed in performance of the work shall at all times be the employees of the Stevedore or of such other person or organization, as the case may be, and are not employees of the Administrator.

21. Agents and Nominees of the Administrator.

21.(a) Wherever and whenever herein any right, power or authority is given or granted to the Ad-

Respondent's Exhibit A-2—(Continued)

ministrator, such right, power or authority may be exercised by the Administrator, War Shipping Administration, or by such agent(s) as he may appoint or by his nominee(s) or by any Deputy Administrator or Associate Deputy Administrator or by the Assistant Deputy Administrator for Ship Operations, the Assistant Deputy Administrator for Fiscal Affairs, or the Pacific Coast Director, and the act or acts of any such agent(s) or nominee(s) Deputy Administrator, Associate Deputy Administrator, Assistant Deputy Administrator, or Pacific Coast Director, when taken, shall constitute the act of the Administrator hereunder.

21.(b) In performing its work the Stevedore may rely upon instructions and directions of any Deputy Administrator, Associate Deputy Administrator, the Assistant Deputy Administrator for Ship Operations, the Assistant Deputy Administrator for Fiscal Affairs, or the Pacific Coast Director, or upon the instructions and directions of any person or agency specifically authorized in writing by the Administrator, War Shipping Administration. Whenever practicable, the Stevedore shall request and obtain written confirmation of any oral instructions or directions so given.

21.(c) Wherever and whenever herein any right, power, or authority is given or granted in terms to the "Administrator, War Shipping Administration" such right, power or authority may be exercised

Respondent's Exhibit A-2—(Continued)
only by the Administrator, War Shipping Administration, his successor(s), or representative(s) thereunto duly authorized in writing.

21.(d) It is understood that services covered by this contract may be obtained hereunder by the Navy or War Departments and in such event if the department concerned shall so elect, all rights, powers, or authority given or granted to the Administrator hereunder may be exercised by an officer of such department authorized under the rules or regulations of the Administrator to so act, or by his representative, to the extent elected, and such officer or his representative shall have exclusive supervision thereof and the act or acts of any such officer or his representative when taken shall have the same full force and effect hereunder as the act or acts of the Administrator would otherwise have had. In performing its work under such circumstances the Stevedore may rely upon and shall comply with the instructions and directions of such officer or his representative, including, without limitation, directions to perform extra or unusual services, and to incur overtime services or additional costs under sub-paragraph 6(e) of this Part II.

22. Compliance with Applicable Laws and Regulations. In performing the work the Stevedore shall abide by and comply with all applicable statutes, ordinances, laws or regulations of the United States

Respondent's Exhibit A-2—(Continued)
(including Executive Orders of the President), any state, or any other public authority, now or hereafter in force.

23. Renegotiation.

23.(a) This contract shall be deemed to contain all the provisions required by subsection (b) of the Renegotiation Act, as amended by Section 701 of the Revenue Act of 1943 (Public Law 235, 78th Congress) enacted February 25, 1944.

23.(b) In compliance with subsection (b) of the Renegotiation Act, the Stevedore shall insert in the subcontracts specified in said subsection (b) either the provisions of this Paragraph or the provisions required by said subsection (b).

24. Repricing. This contract and any subcontract hereunder are subject to Title VIII of the Revenue Act of 1943 (Public Law 235, 78th Congress) enacted February 25, 1944 (Repricing of War Contracts).

Admitted June 24, 1949.

Mr. Franklin: If the Court please, I had hoped by this time to have the usual photostatic copy of the General Agency Agreement which is pleaded in the complaint in the cause of Dillon vs. United States, the General Agency Agreement entered into by War Shipping Administration and the Union

Sulphur Company, which is germane to Cause No. 2261, the action which was consolidated with this admiralty action. I should have had it several days ago, but for some reason or other I have not received it. I would like the Court's and counsel's indulgence to supplement the record within the next few days with that document which will be available. It is a standard General Agency Agreement which Your Honor is familiar with. It is just a question of getting a photostatic copy showing executions by Union Sulphur Company.

Mr. Zabel: I have no objection to that proposal.

The Court: The respondent may proceed.

Mr. Franklin: Respondent United States of America rests.

The Court: With leave to supplement the record with that exhibit later?

Mr. Franklin: It may or it may not, if the Court please. In other words, I think the rule is pretty well settled. The general agent is not [262] liable under this type of suit, but the United States of America is. I take it in the event of judgment against the United States of America Mr. Zabel would be willing to dismiss the action, is that right?

Mr. Zabel: That is right.

The Court: There is nothing in the record to show the non-liability of the agent, to affirmatively show that. I do not know what the parties and their counsel will argue that may be shown touching the liability of the agent. I am not advised of that. There is no stipulation concerning it except the last

statement made, and I do not know that that condition will apply on anything that is in the record, any proof here now. I do not know what that situation will be.

Mr. Franklin: May I ask counsel if he will stipulate that the standard form of the General Agency Agreement which is found, if the Court please,—

The Court: Do you refer to it in any other case in this Court?

Mr. Franklin: I beg your pardon?

The Court: Can you incorporate some record of an exhibit in some other case in this Court or refer to it by reference, stipulate it may be referred to?

Mr. Franklin: It is the same type we used for the Tillman case. The only difference is that in the Tillman case the name Coastwise Line will appear and in the one involved here, the caption Union Sulphur will appear.

The Court: You still have not made a proposition for the Court to act upon. Do you want to ask Mr. Zabel to agree with you about something?

Mr. Franklin: I ask counsel if he will stipulate that I may supplement the record later by filing a photostatic copy of the standard General Agency Agreement executed between the United States of America War Shipping Administration and the Union Sulphur Company?

The Court: Is that the only thing you want? Do you want him to accommodate you by agreeing that some exhibit in some other case is the same thing

and that for convenience of counsel that exhibit may be referred to?

Mr. Franklin: I would ask counsel's further indulgence, if the Court please, if we could get the file in the case of Tillman vs. Coastwise Line which we tried before Your Honor. We used that form of General Agency Agreement. I think we could stipulate that it is identical to the form of agreement which [264] the Union Sulphur Company filed.

Mr. Zabel: I am willing to stipulate to that effect for the purpose of expedition.

The Court: Let the record show that.

Mr. Franklin: The respondent rests. I will introduce the General Agency Agreement in the Tillman case in this case when it is received.

Mr. Zabel: Yes.

The Court: I call the attention of counsel for respondent to the fact that both sides in the Tillman case are not represented, and the Court, without some representation as to the attitude about making that kind of use of the exhibit which is in another case before the Court, would not feel free to do it. I suggest to counsel on both sides in this case that if they are willing to do it, the Court could, pending the introduction in this case, of the exhibit which you have reserved the right to introduce, that for the convenience of all connected with this case in the further proceedings herein, until you do accomplish the filing in this case of that future exhibit which you are going to file, that reference be made to the exhibit in the other case. The Court has no

authority in the absence of Mr. Levinson to take that exhibit out of that file in that case and introduce it in this [265] one.

Mr. Franklin: That will be satisfactory, if the Court please.

The Court: Does the libelant wish to introduce any rebuttal?

Mr. Zabel: I would like to recall the plaintiff for rebuttal testimony.

The Court: He has already been sworn. The plaintiff may resume the stand.

ALFRED L. DILLON

recalled as a witness by and on behalf of libelant, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Zabel:

Q. You have heard the testimony of Mr. Petri with reference to the manner in which this accident happened on May 13th, 1946? A. Yes, sir.

Q. Do you recall he stated that one part of the beam was placed in the slot? A. Correct.

Q. One end of it, and the other one missed the slot? A. Yes, sir.

Q. And that your hand thereafter was caught?

A. That's right.

Q. You have already testified as to how this

(Testimony of Alfred L. Dillon.)

accident happened. I will ask you if, as he stated it, it is possible that it could have happened that way?

A. Well, I would like to have permission to step down to that open piece of the table and there I can explain it. It is just like a slot.

The Court: I think you had better answer counsel's question and let him make the suggestion about what to do.

The Witness: On the starboard side?

The Court: Your counsel had in mind the need to propound to you a certain question and to get from you a truthful answer thereto.

Q. Would you like to use this beam for illustration? A. Yes.

The Court: You may do that. Read the question.

(Last question read by reporter.)

The Court: The answer is yes or no.

The Witness: No, it could not.

Q. With the model beam you have there, will you describe [267] the physical manner in which that beam would conduct itself if one end of it was in the slot and the other one missed the slot?

A. Yes, sir, I can tell you that. Here is a slot here on the starboard side. The beam comes down and goes into that slot. If it misses the port side, you understand, that goes down onto the skin, as we call it, that is on the bottom of the hatch, and this end lays down until somebody goes down and hooks it up to replace it. If that had went down,

(Testimony of Alfred L. Dillon.)

I would have been in the clear. I wouldn't have been jammed with it.

In other words, the thing is, when the beam was—they took a 2 by 4, and that is against the safety code to use a 2 by 4 or anything else to lift that beam—if that had been lifted up by the winches to get my hand off and the hand wasn't caught, and it wasn't caught in the side. You do not reach out to take spreader hooks from the hole of the beam because the hole of the beam is right there in the clearance of the slot. That is where your hole is, it isn't out here. My body was never on that beam. He ran upstairs, he came down and he says, "Hold on, boys." He went up and came down and went up and came down and says, "All right, boys, lift it up." He says they lifted it up. They did not, it was lifted up by the electric winches.

Mr. Zabel: You may examine. [268]

Mr. Franklin: No questions.

The Court: You may step down.

(Witness excused.)

Mr. Zabel: I would like to recall Mr. Sellman.

The Court: You have already been sworn. Take the stand.

CLAUD SELLMAN

recalled as a witness by and on behalf of libelant, having been previously duly sworn, was examined and testified as follows:

(Testimony of Claud Sellman.)

Direct Examination

By Mr. Zabel:

Q. In letting down this strongback, as I understand it, you let the strongback down, the purpose of it is to get it in both these slots athwartship, one on the starboard side and one on the port side?

A. That's right.

Q. If the strongback was let down and it hits the slot on the starboard side and misses the slot on the port side, what would happen to that strongback?

A. Well, the side that missed the slot would go on behind, since the slot sticks out from the coaming. It [269] would go on by and drop into the cargo, on into the hold.

Q. What would happen to the starboard end?

A. If it hit in the slot, it would stay in the slot. Of course, it would depend on how much slack you had on the winch whether it went down or held just below the coaming.

Q. If you had a lot of slack, it would come out of the slot?

A. The other end of the beam could go on down if you had enough slack and no cargo on hand, it would drop into the hold below.

The Court: Will someone ask the witness to describe the size of the slot, how deep it is from the hatch opening side or end of the slot back to the back of it, or the obstruction in the back of it which keeps you from pushing something farther

(Testimony of Claud Sellman.)

inward from the hatch opening in the slot? In other words, I want to know what the size or dimension of the slot may be?

Q. Can you describe that slot?

A. Well, this particular slot—of course, there are different sizes. It depends on the size of the beam. But if I remember correctly, this is a small beam and the slot is very narrow, $\frac{3}{8}$ or $\frac{1}{2}$ an inch slot that the beam goes directly in. Then it is a little wider at the top, flares out at the top to catch this I beam. The beam is in this [270] shape, flat on top and the flanges run down probably six inches below. The flange goes in the slot and the top rests on the top of this pocket. The pocket there is welded in or built in to the side of the hatch coaming.

The Court: Is pocket another name for the slot?

The Witness: Yes, sir.

The Court: How deep is that pocket or slot?

The Witness: It is the depth of the beam.

The Court: That is measured from the top of the beam to the bottom of the beam as it rests in the slot, is it?

The Witness: Yes, Your Honor.

The Court: I am talking about the other dimension, the dimension of the depth of the slot, measured laterally along the same plane as the deck.

The Witness: That protrudes out into the hatch from the coaming?

The Court: Yes.

(Testimony of Claud Sellman.)

The Witness: Of course, that would vary, too. I would say this one here was—it will average about two inches, I believe.

The Court: So at the bottom of the slot, where the strongback end was resting in the slot, at the bottom how deep is that slot, measuring it from the hatch opening and back to the back of it towards the [271] ship side on this tween decks deck?

The Witness: I don't know as I quite understand.

The Court: Forget about the depth of the ship. We are talking about this slot which is at the tween deck hatch opening of No. 1 hatch.

The Witness: Yes, sir.

The Court: The tween deck hatch opening, or level. Go to that hatch opening on either side, starboard or port of the ship, and look at this slot and measure it from the hatch opening towards either side of the ship.

The Witness: I think I see what you mean.

The Court: At the bottom of the slot as the bottom of the beam rests in the bottom of the slot, how deep is it? In other words, how much support, how wide is the support at the bottom of the strongback which that slot gives to the strongback. How many inches wide is that support?

The Witness: The bottom of the strongback?

The Court: At the bottom of the slot and the bottom of the strongback.

(Testimony of Claud Sellman.)

The Witness: The bottom of the slot is, as a rule, just the same as the beam. If this was a half-inch channel—

The Court: That is one thing, but how many inches or feet does that end of the beam have to rest on? [272]

The Witness: Well, it rests on—

The Court: Taken lengthwise of the beam, which is crosswise of the ship, is it not, the beam is placed crosswise of the ship?

The Witness: Yes, sir.

The Court: Taken endwise with that beam, how many inches support has the end of that beam on the port isde of the hatch in the tween deck?

The Witness: The beam has a—I don't know whether it is in a four or five inch channel. I think it is about a four inch channel the beam has a rest.

The Court: Then would the starboard end which went in the slot be pulled out by leaving the port end of the strongback up on the edge of the slot instead of being placed in the bottom of the slot?

The Witness: If one end is in the slot, the only way it can get out is that the beam falls clear down or the other end goes behind the slot and unhooks it. It would be the end that is in the slot that would unhook.

The Court: It would be easier for the starboard end of the strongback to be pulled out by the failure of the port end to be seated in the slot if on the starboard side the slot support was only about two

(Testimony of Claud Sellman.)

inches wide or two inches long under the end of that [273] strongback?

The Witness: Yes, sir.

The Court: The same would be true of the port side, but if the support was six or eight or ten inches wide, it would be a little more trouble to pull one end of the strongback away from its slot when it was seated properly in the slot by a failure to engage and seat the other end of the strongback in its proper slot?

The Witness: I was just trying to think how these stevedores like Brooks—they could tell you easier about that because I don't go down in that hatch very seldom. The exact length of that slot is—

The Court: You may proceed. The witness apparently has no qualifications to answer the question. He says longshoremen would know more about that than he would. He was the hatch tender.

The Witness: It is about 40 or 50 feet, and the exact length of this thing—they could tell you more about that than I could.

Mr. Zabel: That is all.

Mr. Franklin: No questions.

The Court: Step down.

(Witness excused.)

Mr. Zabel: I would like to recall Mr. Dillon.

The Court: You may do that.

ALFRED L. DILLON

recalled as a witness by and on behalf of libelant, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Zabel:

The Witness: Well, Your Honor—

The Court: Wait just a moment. Proceed by question and answer.

Q. With reference to the slot on this particular ship—

The Court: At this deck.

Q. —at this particular time on this particular day of May 13th, 1946, what was the depth of that slot from the beginning of the hatch to the side of that ship? A. You want the depth?

Q. Yes, that is laterally.

A. Yes, I understand.

Q. In other words, how much was hanging in the slot?

A. How much? The beam went right down what you call the flanges from the slot to take the flanges of the beam. [275] That holds it, and you can't go no further. There is also a little gear on the bottom she rests on. It is six inches depth, that is deep, the slot.

Q. Six inches down this way (indicating)?

A. Yes.

Q. Now, back from the hatch.

(Testimony of Alfred L. Dillon.)

A. You mean from the coaming to the outside?

Q. That's right.

A. Approximately one and a half inches width from the coaming of a ship.

Q. From the coaming toward the side of the ship?

A. Yes, sir. No, no, from the coaming—here is the coaming, you understand, and the slot comes only one and a half inches like that.

The Court: I believe that is responsive to the question the Court had in mind.

Mr. Zabel: I think that is all.

Mr. Franklin: No questions.

The Court: You may step down.

(Witness excused.)

Mr. Zabel: Plaintiff rests.

The Court: Is there any further testimony on the part of respondent?

Mr. Franklin: No testimony on behalf of respondent.

The Court: Do both sides rest in both cases [276] consolidated for trial?

Mr. Franklin: Yes, Your Honor.

Mr. Zabel: Yes, Your Honor.

The Court: This matter is continued until Saturday, July 9th, 1949, at 9:30 o'clock in the forenoon for the purpose of further proceedings including the arguments of counsel on the merits and the Court's decision, if the Court is ready to make it,

on that occasion. If you care to do so, I would be glad to have you file a list of the authorities you may wish to comment upon.

Mr. Franklin: Might I raise this question? If Your Honor please, there is introduced in evidence the original copy of the Warshipsteve contract. With counsel's permission, could I take that and have that photostated and replace it with a photo-static copy?

The Court: You will have to arrange with the clerk for that. I think the clerk will have to send somebody along with that exhibit and be present at the photographing and bring it back.

Counsel are excused until the date I have mentioned.

(At 4:15 o'clock p.m., Friday, June 24, 1949, proceedings adjourned until 9:30 o'clock a.m., Saturday, July 9, 1949.) [277]

July 9, 1949, 9:30 o'Clock, A.M.

The Court: You may proceed.

Mr. Franklin: If the Court please, at the termination of the case, as Your Honor remembers, the matter was held open so that the Union Sulphur Company could file as an exhibit the usual General Agency Agreement. It arrived, I might say, the same evening the case terminated. I have shown it to counsel for libelant and counsel for third-party respondent, the standard General Agency Agreement.

In that connection, might I call the Court's attention to the fact that the Supreme Court has overruled the Huss case. The Huss case, if Your Honor remembers, held that the general agent was sueable. Now, in a series of cases, an opinion handed down on June 29th, they reversed that in line with Your Honor's holding and held that the general agent was not sueable by seamen but the action must be against the United States under the Suits in Admiralty Act.

The Court: Do you wish that copy marked as an exhibit?

Mr. Franklin: Yes, on behalf of Union Sulphur Company.

(General Agency Agreement marked Respondent's Exhibit A-3 for Identification.)

The Court: I understand it is now offered?

Mr. Franklin: Yes, if the Court please.

Mr. Zabel: No objection.

The Court: It is admitted in pursuance of the original arrangement. Do you wish the Court to understand with the admission of that exhibit that the respondent's case is now again closed?

(Respondent's Exhibit A-3 received in evidence.)

Mr. Franklin: Defendant Union Sulphur Company's case is closed, if the Court please.

The Court: Is there anything further on the part of the libelant so far as proof and evidence are concerned?

Mr. Zabel: No, Your Honor.

(Arguments made by counsel on behalf of libelant, respondent, and third-party respondent.)

The Court: The General Agency Agreement in evidence as Respondent's Exhibit A-3 convinces the Court that the Union Sulphur Company, Inc., a corporation, is not liable in this action and should be dismissed.

The Court has patiently heard and considered the testimony adduced on behalf of the libelant and respondent and the petitioner and third-party respondent, without undertaking to mention the identity of all the witnesses or [280] the details of all their testimony. Suffice it to say the Court has so heard and considered the testimony of the libelant, the physicians who have examined him, the winch driver, the hatch tender, the chief electrician, Steele, Frank Palmer, Jacob Petri, Kristian Bauer, Martin Packard and Dan Brooks, and each and all of the witnesses whose testimony has been received.

The Court is convinced from a consideration of all the evidence that this libelant, Alfred Dillon, was mistaken when he said in his statement in evidence as Respondent's Exhibit A-1 that there was no defective equipment. The statement was a rather brief and undetailed statement of the occurrences. The statement contains assertions in the nature of conclusions, rather than a discussion and statement as to detailed facts.

However that may be, I think it reasonable to

conclude, as the Court does, that the witness was not at the moment he made that statement thinking of the winch. I believe he was thinking of the equipment which he himself personally, directly, was operating; the spreaders and equipment attached directly to the strongback which he was trying to assist in replacing in its seat in the hatch coaming.

The Court is convinced by a preponderance of the evidence and accordingly finds, concludes and decides that [281] this accident and the injuries received by libelant as a result thereof were proximately caused by the unseaworthiness of the ship, and by the negligence of the Rothschild Stevedoring Company in that the winches at the hatch where the libelant was working and in operation in connection with the job then being done had defective and insufficient equipment; namely, brakes which did slip, and that such slipping of the brakes did proximately cause a sudden lowering of that strongback and the resulting crushing of the little finger on libelant's right hand and the finger next to that little finger, and also the tendons of the fingers and the flesh and tissues of those fingers.

The Court further finds, concludes and decides that these winch brakes had been in that unseaworthy and insufficient condition for some time, long enough for the shipowner to have discovered it and had time to have remedied and repaired the defect, and for a time long enough for the Rothschild Stevedoring Company to have by reasonable inspec-

tion ascertained and given attention to such unseaworthy and insufficient condition;

That the respondent United States of America is liable for the unseaworthiness of the ship caused by such unseaworthy and insufficient equipment in and about the winches and the winch brakes; and that third-party respondent Rothschild Stevedoring Company is guilty of [282] negligence in that it failed to exercise due and ordinary care in furnishing to libelant and those persons working with him a sufficient instrumentality reasonably safe and suitable for doing the work in which libelant and other employees of Rothschild Stevedoring Company were engaged at the time the accident occurred; and that such negligence on the part of Rothschild Stevedoring Company was a proximate cause of the accident and resultant personal injuries sustained by libelant;

That as between Rothschild Stevedoring Company and the United States of America, the former was entitled under the stevedoring contract to use the ship's winches supplied for the work by respondent United States of America; and that the negligence of the United States of America in comparison with the negligence of Rothschild Stevedoring Company was primary and that of Rothschild Stevedoring Company was passive; and that Rothschild Stevedoring Company is entitled to exoneration or reimbursement by respondent United States of America on account of any sums of money which Rothschild may be required to pay to libelant in discharge of

any judgment or decree which the Court may enter against Rothschild Stevedoring Company in favor of libelant.

The question of the amount of recovery in this case, more so than in the ordinary negligence case, is [283] troubling and more difficult of determination. In the first place, the Court believes from the evidence that libelant's physical appearance, demeanor and physical activities while he has been present in the courtroom during this trial clearly indicate that during the trial libelant has been subject to some health debility wholly unaccounted for by any injury of the kind, extent and nature received by him in connection with this accident.

I do not believe any man in ordinary health, at the age he was when he sustained his injuries in connection with this accident, would likely experience such an apparent debility as he now seems to be experiencing.

I am not convinced by the evidence before the Court nor by reason of what appears to be the libelant's general health condition that he would be entitled to recovery of any amount based on the normal expectancy of life of the average person of his age. Likewise, the Court is not convinced that all of the disability in his arm claimed by him is the result of the injuries which were caused by the accident to the two fingers in his right hand and to the tendons and flesh tissues in and about those fingers.

From the evidence and his demeanor, I do not believe that he has Volkmann's ischemia. Likewise, I do not believe that he is suffering from Dupuytren's contracture. I do believe that, by reason of the injuries sustained by [284] him to his little finger and the finger next to that in his right hand, he experienced some soreness for a long time in and about those fingers, and that in the process of favoring those fingers and giving up to the soreness in them he has experienced some stiffness in the joints of those and other fingers as clearly indicated by the appearance of the joints at the large knuckles in his hand, but that after this litigation is completed he very likely will, through exercise and normal and necessary use of his hand, recover some of that mobility which he normally before the accident enjoyed in the knuckle joints of his right hand.

I am so convinced because of the very telling evidence, which I regard as very significant, that he has experienced very little atrophy of the muscles in his arm above the elbow and in the forearm; also because of that condition described by Dr. O'Neil, the libelant's doctor, as a minor degree of muscular atrophy at the shoulder.

I do not believe that he has the limitation of muscular movement described by him, or which he apparently convinced his doctor, Dr. O'Neil, that he was afflicted with in his right arm.

Finally, I do not believe from the evidence and by his demeanor and appearance that libelant now is suffering from muscular contraction and restric-

tion of movement of which he complains. I believe from the evidence that a [285] very large percentage of his presently complained of symptoms of all kinds is due directly to his general health condition rather than to traumatic injury received by him in connection with this accident.

However, he has received disability causing him to be unable to work as a longshoreman as a result of this accident, and he did undoubtedly receive traumatic injury of the nature I have previously described; namely, fractures in the little or fifth finger and in the finger next to that (described as the fourth finger) and traumatic injury to the tendons and flesh tissues in and about those fingers. There is some doubt in my mind as to whether those fingers will ever be normal again. They may not be.

Considering all of the evidence in this case relating to the nature and extent of his injuries, and his appearance and demeanor in the courtroom, the Court finds, concludes and decides that the sum of \$7,500.00 is a reasonable and just sum to compensate the libelant for all of his injuries sustained as a direct and proximate result of the unseaworthy condition of the vessel and the negligence of the Rothschild Stevedoring Company;

That he is entitled to judgment and decree against the Rothschild Stevedoring Company and the United States of America jointly and severally for that sum, and that that sum is intended by the Court as compensation for all of his [286] special

and general damages sustained by him on account of the accident here involved.

As previously indicated by the Court, the Court further decides that while the libelant is entitled to recover against both of these respondents just named jointly and severally, nevertheless Rothschild Stevedoring Company is entitled to exoneration and indemnification from respondent United States of America in respect to any and all sums which Rothschild may have to pay the libelant, and that United States of America is the party ultimately liable for all of the injuries and damages sustained by libelant.

Further, the libelant is entitled to recover his taxable costs herein incurred from both respondents. The decision of the Court respecting indemnity in favor of Rothschild Stevedoring Company against United States of America applies to the costs as to all the other items of recovery.

It is the Court's finding, conclusion and decision that the libelant was at the time of the accident in the exercise of due and reasonable care for his own safety, and that he is not guilty of contributory negligence and did not assume any risks of the unseaworthiness of the vessel nor of the negligence of his employer, Rothschild Stevedoring Company.

(At 12:30 o'clock p.m., Saturday, July 9, 1949, trial proceedings concluded.) [287]

CERTIFICATE

I, Patricia Stewart, do hereby certify that I am official court reporter for the above-entitled court, and as such was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ PATRICIA STEWART,
Official Court Reporter.

[Endorsed]: Filed November 18, 1949.

[Title of District Court and Cause.]

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that I am transmitting as the apostles on appeal in the above entitled cause the following original pleadings and testimony together with Respondent's Exhibits A-1, A-2 and A-3, and Libelant's Exhibits 1 to 4, inclusive, and that said pleadings, documents and exhibits constitute the apostles on appeal from the Judgment and Decree filed and entered on July 25, 1949, to the United States Court of Appeals for the Ninth Circuit, to-wit:

1. Libel in Personam.
2. Praeclipe for Citation to Respondent.

3. Stipulation for Costs.
4. Marshal's Return on Citation (U. S. of America).
5. Appearance of Proctors.
6. Affidavit of Mailing Libel in Personam.
7. Praecept for Issuing Original and Three Copies of Citation to U. S. of America.
8. Appearance of Bogle, Bogle & Gates for Respondent, U. S. of America.
9. Answer.
10. Marshal's Return on Issuance of Citation to U. S. of America.
11. Appearance of Bogle, Bogle & Gates for Petitioner, U. S. of America.
12. Notice of Application for Order Impleading Third Party.
13. Order Allowing Third Party Petition.
14. Appearance of W. E. DePuis for Third Party Respondent.
15. Cost Bond.
16. Motion to Strike Third Party Petition of United States of America.
17. Brief.
18. Deposition Upon Oral Examination Before Trial of Alfred L. Dillon.

19. Marshal's Return on Citation on Third Party Respondent.
20. Deposition of James A. Steele.
21. Note for Hearing of Motion to Strike Third Party Petition.
22. Answer of Third Party Respondent.
23. Order Overruling Third Party Respondent's Motion to Strike Petition.
24. Deposition of Kristian Bauer.
25. Direct Interrogatories Propounded to Frank Palmer by Respondent, United States of America.
26. Praecept to Issue Subpoena Duces Tecum for Dr. Edmund Smith and Seattle General Hospital.
27. Marshal's Return on Subpoena Duces Tecum to Seattle General Hospital.
28. Stipulation and Order for Consolidation of Causes.
29. Notice of Taking Deposition of Frank Palmer.
30. Statement of Points.
31. Brief of Libelant in Support of Judgment.
32. Brief of Respondent.
33. Court's Decision (Announced July 9, 1949).
34. Findings of Fact and Conclusions of Law.

35. Judgment.
36. Memorandum of Costs and Disbursements.
37. Petition for Appeal and Order for Appeal.
38. Praeclipe for Apostles on Appeal.
39. Citation on Appeal.
40. Assignment of Errors.
41. Reporter's Transcript of Testimony in Proceedings.

In Witness Whereof I have hereunto set my hand
and affixed the official seal of said District Court
at Seattle, this 18th day of November, 1949.

/s/ MILLARD P. THOMAS,
Clerk.

[Seal] By /s/ TRUMAN EGGER,
Chief Deputy.

[Endorsed]: No. 12405. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Rothschild International Stevedoring Company, a corporation, Appellee, Apostles on Appeal. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed November 22, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit

In Admiralty—No. 12405

UNITED STATES OF AMERICA,

Appellant,

vs.

ROTHSCHILD - INTERNATIONAL STEVE-
DORING COMPANY, a corporation,
Appellee.APPELLANT'S DESIGNATION OF STATE-
MENT OF POINTS ON APPEAL

Appellant states that the only points to be reviewed on appeal of this cause to the United States Court of Appeals for the Ninth Circuit is the refusal of the trial court to grant the United States of America a judgment for the recovery over against Rothschild-International Stevedoring Company, a corporation, third party, either by way of full indemnity or contribution for the judgment entered in the above cause against the United States of America, in favor of libelant Alfred L. Dillon in the amount of \$7,500.00 and costs for personal injuries sustained by libelant, and the entry by the trial court of Findings of Fact and Conclusions of Law and Decree adjudging that appellee Rothschild-

International Stevedoring Company, a corporation,
was entitled to its costs against appellant.

Dated at Seattle, Washington, this 1st day of
December, 1949.

/s/ J. CHARLES DENNIS,

United States Attorney,

Proctors for Appellant United States of America.

Of Counsel:

BOGLE, BOGLE & GATES,

Receipt of copy acknowledged.

[Endorsed]: Filed Dec. 2, 1949.

[Title of Court of Appeals and Cause.]

DESIGNATION OF APOSTLES ON APPEAL

To: The Honorable Paul P. O'Brien, Clerk of the
United States Court of Appeals for the Ninth
Circuit, San Francisco, California.

We hereby request that the Apostles on Appeal
in the above-entitled case shall include the follow-
ing:

(1) Libel.

(2) Answer.

(3) United States of America's Third Party
Petition.

(4) Order Allowing Third Party Petition.

(5) Answer of Third Party Respondent.

- (6) Testimony of all of the witnesses testifying in the trial of said cause except the following witnesses: Dr. Gordon B. O'Neil, Dr. H. T. Buckner and Martin O. Packard.
- (7) Respondent's Exhibit A-2 (being Warship-steve Contract).
- (8) Findings of Fact and Conclusions of Law.
- (9) Decree.
- (10) Transcript of Judgment showing satisfaction thereof by the United States of America.
- (11) Petition for Appeal and Order on Appeal.
- (12) Assignment of Errors.
- (13) Citation and Service.
- (14) Appellant's Statement of Points.

Of Counsel:

BOGLE, BOGLE & GATES,
/s/ J. CHARLES DENNIS,
United States Attorney,
Proctors for Appellant
U. S. A.

Receipt of copy acknowledged.

[Endorsed]: Filed Dec. 2, 1949.

[Title of Court of Appeals and Cause.]

COUNTER DESIGNATION OF APOSTLES ON APPEAL

To: The Honorable Paul P. O'Brien, Clerk of the
United States Court of Appeals for the Ninth
Circuit, San Francisco, California.

Appellee hereby requests that the Apostles on
Appeal in the above entitled case include all Apostles
on Appeal designated by the appellant, United
States of America, and in addition that the follow-
ing be included by this counter designation:

- (1) Testimony of the witness Martin O. Packard,
who testified in the trial of said cause.
- (2) Respondents' Exhibit A-1.

/s/ W. E. DuPUIS,

Proctor for Appellee Rothschild - International
Stevedoring Company.

Receipt of copy acknowledged.

[Endorsed]: Filed Dec. 7, 1949.